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No. 87-1055

In the Supreme Court of the United States

OCTOBER TERM, 1987

ELISA CHAN, ET AL., PETITIONERS

v.

KOREAN AIR LINES, LTD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

CHARLES FRIED
Solicitor General

JOHN R. BOLTON
Assistant Attorney General

DONALD B. AYER
Deputy Solicitor General

RICHARD J. LAZARUS
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217



QUESTION PRESENTED

Whether the limitation prescribed by the Warsaw Convention on an air carrier's liability applies only where notice of the applicability of the Convention's liability rules is printed on an airline passenger's ticket in at least ten-point type, as required by the Montreal Agreement.

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INTEREST OF THE UNITED STATES

This case presents a question of recurring importance concerning the meaning of certain provisions of the Warsaw Convention[1] and Montreal Agreement.[2] The Warsaw Convention creates a uniform regime to govern the international carriage of passengers, baggage and cargo by air, including rules governing passenger tickets, baggage checks, and air freight bills of lading (waybills), and regulates the liabilities of carriers. The Montreal Agreement is a private agreement among air carriers, approved by the Civil Aeronautics Board, committing them to enter into agreements with passengers pursuant to Article 22(1) of the Warsaw Convention, which increase the Convention's limita-

[1] This treaty, commonly referred to as "the Warsaw Convention," is formally titled the Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, *reprinted in* 49 U.S.C. App. 1502 note. The governing text of the Convention is in the French language. See App., *infra*, 1a-14a; *Air France* v. *Saks*, 470 U.S. 392, 397 (1985).

[2] See Pet. App. B4-B6.

tion on liability, and committing them also to give a specified notice of that limitation (App., *infra,* 12a-13a). See Pet. App. B4-B5.

The court of appeals held that the failure to provide notice of the applicability of the Warsaw Convention's liability rules in ten-point type, as required by the Montreal Agreement, does not preclude an air carrier from availing itself of the Convention's limitation of liability at the level set by the Montreal Agreement. The court's opinion is inconsistent with the longstanding view of the Executive Branch that adequate notice to the passenger of the Convention's liability limitation is a precondition to enforcement of that limitation. It also undermines the Montreal Agreement's ten-point type requirement, insisted on by the United States in 1966 as a condition for withdrawing its notice of denunciation of the Warsaw Convention. For this reason, the Court's resolution of the question presented is of interest to the United States, which continues to regard the Warsaw Convention as a binding international agreement. Also, because victims of airplane accidents and their representatives sometimes sue both the United States and air carriers for damages, and the Convention's liability limitation applies only to air carriers, this Court's resolution of the question presented may affect the extent of the government's liability in future litigation.[3]

[3] At the Court's invitation (387 U.S. 901 (1967)), we filed a brief expressing the views of the United States in *Alitalia-Linee Aeree Italiane, S.p.A.* v. *Lisi,* 390 U.S. 455 (1968), aff'g by an equally divided court, 370 F.2d 508 (2d Cir. 1966), which raised the question whether the Convention's liability limitation applied in the absence of adequate notice of the applicability of the Convention's liability rules on the passenger's ticket. The United States is also a party in *Pan American World Airways, Inc.* v. *Pampin Lopez,* petition for cert. pending, No. 87-750 (filed Nov. 6, 1987), which raises the issue presented in this case. In our brief in No. 87-750, we recommended that the Court grant the petition in this case and hold the petition in No. 87-750 pending the Court's decision here.

STATEMENT

A. The Warsaw Convention and the Montreal Agreement

1. *Pre-Warsaw Convention Proceedings*: The Warsaw Convention of 1929 was the product of an ambitious effort initiated by France to achieve an international agreement on private aviation law. In 1925, 45 nations sent delegates to participate in the first international Conference on Private Aviation Law hosted by France in Paris. See *Air France* v. *Saks,* 470 U.S. 392, 401 (1985).[4] The delegates considered a proposed draft agreement prepared by France (App., *infra,* 21a-22a (15a-16a))[5] and, following its revision, approved of a draft agreement which provided both for a limitation on air carrier liability and for the establishment of both passenger tickets and air waybills, the latter concerning the air shipment of freight (*id.* at 25a-26a (19a-20a); see also *id.* at 22a-24a (16a-19a) (report and draft of conference committee)). A committee of experts on private aviation law—Comité International Technique D'Experts Juridiques Aériens (CITEJA)—was created to develop a draft agreement for the conferees to vote on at a future conference

[4] This effort paralleled that concerning public aviation law which culminated in the International Convention for Aerial Navigation, adopted at Paris on October 13, 1919. See Sack, *International Unification of Private Law Rules on Air Transportation and the Warsaw Convention,* 4 Air L. Rev. 345, 345-346 (1933); Cha, *The Air Carrier's Liability to Passengers in International Law,* 7 Air L. Rev. 25, 28 (1936); Ide, *The History and Accomplishments of the International Technical Committee of Aerial Legal Experts (C.I.T.E.J.A.),* 3 J. Air L. 27, 27 (1932); see also D. Billyou, *Air Law* 16-18 (2d ed. 1964).

The United States sent observers to both the Paris and Warsaw Conferences.

[5] We have reproduced in an appendix to this brief excerpts from the documents relevant to the Warsaw Convention's drafting history ("travaux preparatoires"). The documents are in French and translations (prepared with the assistance of the State Department) are also reproduced. References are to the appended English translations, followed by a parenthetical indicating where the original French language version (also appended) may be found. The original documents, including some translations into English contemporaneously made, are located in the National Archives, in RG 59, Boxes 5620 and 5621.

(see *id.* at 27a (21a)). See generally M. Smirnoff, *Le Comité International Technique D'Experts Juridiques Aériens (C.I.T.E.J.A.)* (1936). CITEJA established four commissions to draft agreements for CITEJA's plenary consideration (App., *infra,* 31a-33a (28a-31a)). The issues of the air waybill and the liability of the air carrier towards shippers of goods and passengers, among others, were assigned to the "Second Commission" (*id.* at 32a-33a (29a-30a)).

At CITEJA's second session, held in April 1927, the Second Commission submitted a draft agreement concerning the form of the waybill (App., *infra,* 53a-56a (40a-44a)), which CITEJA approved, with revisions (*id.* at 57a (45a-46a); see *id.* at 47a-53a (34a-40a) (CITEJA debates)). However, CITEJA also asked the Second Commission to prepare a draft convention joining the air waybill agreement with an agreement on the liability of air carriers (*id.* at 58a (46a)). The Second Commission met in March 1928, and prepared a new draft (*id.* at 92a-97a (72a-78a)) that included Articles dealing with passenger tickets and baggage checks in a manner largely paralleling in substance the provisions previously formulated for waybills (*id.* at 92a (72a-73a); compare 94a-97a (75a-78a) with 55a-56a (42a-44a)). In its Third Session, held in May 1928, CITEJA revised the Commission's draft and approved it for submission to member nations at a conference to be held in Warsaw. See J.A. 181-193; App., *infra,* 79a-92a (59a-72a) (CITEJA debates); see also *id.* at 105a-107a (98a-100a) (final CITEJA report).[6]

2. *The Warsaw Convention*: During the Second International Conference on Private Aviation Law, held in Warsaw in 1929, the delegates adopted a revised version of CITEJA's final draft, now known as the Warsaw Convention. The chapter on transportation documents establishes the requirements for passenger tickets (art. 3 (App., *infra,* 8a(1a)), baggage checks (art. 4 (App., *infra,* 8a-9a(2a)), and air waybills (arts. 5-16 (App., *infra,* 9a-12a (2a-5a)), including their legal effect and operation, information ("particulars") that must be contained in

[6] Model transportation documents were appended to CITEJA's final report (see App., *infra,* 102a-104a).

each, and sanctions for violation of the Convention's requirements regarding the documents. Under Article 3(1), the carrier must deliver a "ticket" to the passenger, which must contain, *inter alia,* "[a] statement that the transportation is subject to the rules relating to liability established by this convention" (App., *infra,* 8a (1a)). The consequence, under Article 3(2), of a "carrier accept[ing] a passenger without a passenger ticket having been delivered" is that the carrier is "not * * * entitled to avail himself of those provisions of th[e] convention which exclude or limit his liability" (App., *infra,* 8a(1a)).

The chapter on air carrier liability establishes, in Article 22, limitations on air carrier liablity for any injury to passengers or damage to checked baggage or to goods (App., *infra,* 12a-13a (5a-6a)). The liability limitation for passengers is 125,000 Poincaré francs (then approximately $8,300) (*ibid.*). Articles 20 and 21 provide the carrier with certain defenses to liability claims (App., *infra,* 12a (5a)), and Article 25 removes the liability limitation "if the damage is caused * * * by wilful misconduct" (App., *infra,* 14a (7a)). Finally, in the last chapter, Article 39 gives each nation the right formally to withdraw from the Convention, effective six months after notice of denunciation (App., *infra,* 14a (7a)).

The United States became a party to the Warsaw Convention in 1934, following a voice vote in the Senate. See 78 Cong. Rec. 11582 (1934); see generally Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention,* 80 Harv. L. Rev. 497, 502 (1967). There were no congressional hearings, reports, or debate on the question. See *TWA, Inc.* v. *Franklin Mint Corp.*, 466 U.S. 243, 273 (1984) (Stevens, J., dissenting).

3. *Post-Warsaw Convention Proceedings and the Montreal Agreement*: The Hague Protocol of 1955 amended the Warsaw Convention in several respects. See J.A. 245-277. The liability limitation was approximately doubled to 250,000 Poincaré francs (currently worth approximately $20,000), and certain air carriers' defenses were eliminated. In addition, the Conference adopted the United States' proposal to amend Article 3 in two significant respects. First, the notice requirement in Article 3(1)

was revised to demand that the ticket include a statement that the Warsaw Convention "may be applicable" if the passenger's journey involves travel in more than one country and that the Convention "in most cases limits the liability of carriers." Second, Article 3(2) was amended to provide that "if * * * the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by * * * this Article, the carrier shall not be entitled to avail himself of the [Convention's liability limitation]." See J.A. 252-255; see also *id.* at 215, 230. The United States, however, declined to ratify the Hague Protocol because it found insufficient the increase in liability limits for claims involving death or bodily injury. Lowenfeld & Mendelsohn, *supra,* 80 Harv. L. Rev. at 510-516, 532-546, 564.

On November 15, 1965, the United States gave notice of its intention to denounce the Warsaw Convention, and thus to withdraw effective in six months, pursuant to Article 39 of the Convention. At the same time, the United States made clear that it would rescind the notice of denunciation if the contracting nations appeared likely to agree to increase the liability limit to approximately $100,000, and the carriers agreed, in the interim, to increase the liability limit to $75,000. See J.A. 278. On the eve of the planned denunciation, the carriers agreed to the $75,000 liability limitation and to other United States demands. This Agreement, known as the Montreal Agreement of 1966 (Pet. App. B4-B6), was approved by the Civil Aeronautics Board (CAB) on May 13, 1966 (see J.A. 285-288; 31 Fed. Reg. 7302 (1966)), and the United States withdrew its proposed denunciation of the Convention in light of the Agreement (J.A. 281-284; see Lowenfeld & Mendelsohn, *supra,* 80 Harv. L. Rev. at 586-596).

Under the Montreal Agreement, virtually all air carriers conducting international flights into or out of the United States agreed to include in their tariffs a special contract under which the liability limit for death or bodily injury would be raised voluntarily to $75,000 inclusive of legal fees and costs (or $58,000 exclusive of legal fees and costs) for each passenger

(Pet. App. B4). The carriers further agreed to provide in their tariffs that they would waive their right to assert the due care defense provided by Article 20(1) of the Convention (Pet. App. B4). Finally, the carriers agreed "at the time of delivery of the ticket, [to] furnish to each passenger whose transportation is governed by the [Warsaw Convention] * * *" a notice, set out verbatim in the Agreement, "printed in type at least as large as 10 point modern type" advising the international passenger that the Warsaw Convention's liability limitations may apply to the journey (Pet. App. B5).[7]

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[7] Efforts to revise the Warsaw Convention have continued. The United States and many other nations have signed the Guatemala City Protocol of 1971 and the Montreal Protocols Nos. 3 and 4 of 1975, but neither of these amended versions of the Warsaw Convention has been ratified by the United States or entered into force. The Guatemala City Protocol amends the Convention by raising the liability limit to approximately $100,000 per passenger. It also makes significant changes in the rules governing liability. See generally, Mankiewicz, *Warsaw Convention: The 1971 Protocol of Guatemala City,* 20 Am. J. Comp. L. 335 (1972). The Protocol eliminates the due care defense for passenger death or injury, deletes the provisions of the original Warsaw Convention requiring delivery of a ticket and notice of the liability limitation, and, unlike the Convention, does not provide for unlimited liability where the carrier engages in wilful misconduct or fails to deliver a ticket to the passenger. The Guatemala City Protocol, however, retains in modified form the carrier's right to plead contributory negligence. Montreal Protocol No. 3, in relevant part, incorporates the preceding amendments made by the Guatemala City Protocol, but expresses the $100,000 liability limitation in terms of $100,000 Special Drawing Rights (currently worth approximately $136,000). See S. Exec. Rep. 97-45, 97th Cong., 1st Sess. 4 (1981); S. Exec. Rep. 98-1, 98th Cong., 1st Sess. 4 (1983). Montreal Protocol No. 4 amends and updates the cargo provisons of the Convention as modified by the Hague Protocol. See generally, G. Miller, *Liability in International Air Transportation* 37-49 (1977).

The Senate Committee on Foreign Relations previously recommended approval of Montreal Protocols Nos. 3 and 4, S. Exec. Rep. 98-1, *supra,* at 5, 6, coupled with a domestic plan to supplement the Convention's liability limitations. On March 8, 1983, the Senate, however, voted 50-42 to approve the protocols, falling short of the two-thirds majority needed for approval. 129 Cong. Rec. 4241-4251 (1983); see *Air France* v. *Saks,* 470 U.S. at 403. Following that vote, a motion to reconsider was entered (129 Cong. Rec. 4251 (1983)), but the Senate has not yet reconsidered the question. The Department of Transportation and several other agencies are currently formulating a new

B. Proceedings Below

On September 1, 1983, Korean Air Lines (KAL) Flight 007, a commercial flight, departed from Kennedy Airport for Seoul, South Korea. The airplane strayed into the Soviet Union's airspace, where it was destroyed by a missile launched by a Soviet military aircraft. All the passengers and crew members were killed. Petitioners, representatives of passengers who were killed, brought damage actions against respondent KAL in several federal district courts, including the Southern and Eastern Districts of New York, Eastern District of Michigan, District of Massachusetts, and District of Columbia. The Judicial Panel on Multidistrict Litigation transferred these actions to the District Court for the District of Columbia for pretrial proceedings.

Petitioners filed with the district court a motion for partial summary judgment in which they sought a declaration that respondent KAL could not rely on the Warsaw Convention's liability limitation, as modified by the Montreal Agreement, because the notice of that limitation appeared on the passengers' tickets in eight-point rather than ten-point type (Pet. App. A13). The district court denied petitioner's motion, ruling that the liability limitation applied.

According to the court, "defects in the physical ticket are not to interfere with the enforceability of the liability rules" (Pet. App. A31). "Indeed," the court noted, "inadequate notice through the statement could be considered an 'irregularity" or defect in the passenger ticket which 'shall not affect the existence or the validity of the contract of transportation, which shall nonetheless be subject to the rules of this convention' " (*ibid.* (quoting Article 3(2)); Pet. App. B1). "[T]he *quid pro quo* for the limitation is, not notice, but liability without fault. * * * There is no evidence that the treaty drafters and signatories intended 'adequate notice' to affect the operation of the treaty limitation" (*id.* at A34).

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supplemental compensation plan for consideration by the Senate, which would provide for unlimited per passenger recoveries for economic loss.

The district court likewise rejected petitioners' claim that the Montreal Agreement was intended to lift the liability limitation if the air carrier failed to include notice of that limitation on the passenger ticket in at least ten-point type (Pet. App A37-A40). According to the court (*id.* at A38), the Montreal Agreement "did not alter the *quid pro quo* by linking Articles 22 and 20 with Article 3." "Nothing in the debate or dissatisfaction with the limitation which led to the Montreal Agreement confirms the contention that 'adequate notice' was an issue" (Pet. App. A37). In any event, the Court found (*id.* at A39) a "basic flaw" in petitioner's argument to be "the assumption that the Montreal Agreement can operate as an amendment to the Warsaw Convention; it cannot." "Under the [Warsaw] Convention's provisions, the carrier and the passenger may agree to a higher limit of liability. While the limit may be raised, nothing in the 'special contract' provision [of the Convention] allows it to be completely removed" (*ibid.*). The court noted, however, that "[w]ere [it] faced with a clear, political decision to avoid the treaty limitation where there has not been 'adequate notice,' however defined, or were it faced with an express waiver, * * * then a different decision would be possible" (*ibid.*).

2. The court of appeals affirmed (Pet. App. A1-A11). The court "adopt[ed] as [its] opinion the comprehensive [opinion] of the district court," which the court of appeals reprinted as an appendix to its own decision (*id.* at A4, A12-A42).

SUMMARY OF ARGUMENT

Respondent KAL is not entitled to rely on the liability limitations of the Warsaw Convention because its passenger ticket failed to provide the required notice of the applicability of the Convention's liability rules in at least ten-point type, as required by the Montreal Agreement.

1. First, Article 3(1) of the Warsaw Convention explicitly requires the air carrier to deliver to the passenger a "ticket" that contains notice of the applicability of the Convention's liability rules. Article 3(2) states that a carrier who accepts a passenger without a "ticket" having been delivered may not invoke the

Convention's provisions limiting liability. Similar sanction provisions in other Articles of the Convention add that the liability limitation may be lost for the additional reason of failure to comply with specified particulars—including the notice requirement. Contrary to the court of appeals' opinion, a comparison of Article 3(2) to these parallel provisions in other Articles does not unambiguously establish that the Convention intended to leave the liability limitation in effect where a carrier delivers a ticket that lacks the required notice. The language may also be read to include the notice of limited liability as an essential element of any "ticket" whose delivery is necessary if the liability limits are to remain in effect.

The history of the Convention's preparation and adoption indicates that the drafters intended that the same loss of liability limitation was to result from failure to comply with the notice requirement in the case of passenger tickets, as in the case of baggage checks and air waybills. The differences in language appearing in Article 3(2), as contrasted with Articles 4(2) and 9, are explicable not by any intention to withhold the sanction for failure to give notice under Article 3, but rather as the unhappy consequence of two amendments that worked together to create an implication that neither of them intended. Indeed, one of the amendments was intended to make it clearer that the sanction would apply in that very circumstance. Hence, the negative implication upon which respondent KAL relies does not accurately reflect the parties' intent.

2. This Court need not step outside its limited judicial function to rule that the Montreal Agreement's ten-point type standard supplies the measure for determining compliance with the Warsaw Convention's notice requirement. Respondent is a party to the Montreal Agreement, which is a commitment among carriers to offer to passengers an increased ceiling on liability—as expressly contemplated in Article 22(1) of the Convention—and to set forth in an agreed upon form a particular notification of that limitation. Contrary to the opinion below, there is no bar to the air carriers' agreeing to comply with the Convention's notice requirement in a particular manner. Certainly, the carriers are hard pressed to argue that a violation of the Montreal Agreement's notice standard is unrelated to the requirements of the Warsaw Convention, in implementation of which the Montreal Agreement was executed.

In any event, the ten-point type standard provides a clear, well-settled standard that should be applied as the judicial measure for determining compliance with the Warsaw Convention's notice requirement. The ten-point standard reflects the longstanding judgment of the expert federal agency (formerly the Civil Aeronautics Board and currently the Department of Transportation) concerning the size of type providing sufficient notice of the liability rules. Such a clear and definite standard is also far more desirable for all concerned than respondent's proposal that courts engage in ad hoc factual inquiries into the adequacy of notice in individual cases.

ARGUMENT

THE WARSAW CONVENTION'S LIABILITY LIMITATION IS NOT AVAILABLE TO A CARRIER THAT FAILS TO PROVIDE NOTICE OF THE APPLICABILITY OF THE CONVENTION'S LIABILITY RULES ON A PASSENGER TICKET IN TEN-POINT TYPE, AS REQUIRED BY THE MONTREAL AGREEMENT

"When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place." *Louisville Gas & Elec. Co.* v. *Coleman*, 277 U.S. 32, 41 (1928) (Holmes, J., dissenting). So it is in this case. To many, the Montreal Agreement's requirement that carriers provide notice of the applicability of the Warsaw Convention's liability rules on a passenger ticket in at least ten-point type may seem arbitrary. Certainly, "[i]t might as well or nearly as well be a little more to one side or the other" (*ibid.*). Yet the United States withdrew its notice of denunciation of the Warsaw Convention only upon extracting from air carriers their agreement to adhere to that very requirement. Hence, the im-

portance of the ten-point type standard to the United States cannot be gainsaid.

Airline carriers may not, moreover, fairly argue that it is unduly harsh to deprive them of the Convention's liability limitation when they fail to provide passengers with the required notice in ten-point type on the ticket. For over 20 years, the air carriers have had notice of the ten-point type standard and have agreed to its strict adherence. That standard, once declared, hardly seems the sort to make ready compliance burdensome. Indeed, in many respects, the ten-point type standard would seem far preferable to air carriers than the more vague standard that notice must be "adequate."

For whatever reason, however, some carriers, such as respondent KAL in this case, seem unable or unwilling to achieve compliance with the clear standard and thus would have the Court, like the court of appeals, apply its own notion of what constitutes "adequate notice" (Pet. App. A37). We believe their invitation should be declined and the Montreal Agreement's ten-point standard strictly honored. We believe, moreover, that the sanction supplied by the Warsaw Convention, and furthered by the Montreal Agreement, for failure to include the requisite notice should apply where the ten-point type standard has not been met. Any seeming inequity in application of that sanction is, particularly at this late date, not unduly harsh; for the sanction is self-inflicted.

A. The Warsaw Convention Denies the Protection of the Convention's Limitation on Liability to an Air Carrier That Has Failed to Provide Adequate Notice on the Passenger Ticket of the Applicablity of the Convention's Liability Rules

1. The threshold question presented by this case concerns what condition, if any, Article 3 of the Warsaw Convention imposes on an air carrier in order to avail itself of the Convention's limitation on liability, which may work a considerable hardship on passenger victims of airline accidents. "The analysis must begin * * * with the text of the treaty and the context in which the written words are used." *Air France* v. *Saks*, 470 U.S. 392, 396-397 (1985) (citation omitted); *Societe Nationale Industrielle*

Aerospatiale v. *United States District Court for the District of Iowa*, No. 85-1695 (June 15, 1987), slip op. 10. In this case, the relevant treaty language is ultimately ambiguous because it admits of two different, and conflicting, interpretations. Article 3(1) provides that "the carrier must deliver a passenger ticket which shall contain the following particulars," and lists among those particulars "[a] statement that the transportation is subject to the rules relating to liability established by this convention" (App., *infra*, 8a (1a)). Article 3(2) then provides that "if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability" (App., *infra*, 8a (1a)). A fair reading of these provisions, taken together, is that an air carrier has not "delivered" a "ticket" within the meaning of Article 3(2), unless it contains the required "statement" of limited liability, and thus, in that circumstance, may not avail himself of the liability limitation.

Viewed "as a whole" (*K Mart Corp.* v. *Cartier, Inc.*, No. 86-495 (May 31, 1988), slip op. 7-8), however, the language and structure of the Convention introduces an ambiguity into what would otherwise have seemed the plainly correct reading of Article 3. Specifically, a comparison of the language and structure of Article 3 and Article 4 (concerning baggage checks) suggests a different construction. Both Articles list in their respective first paragraphs those "particulars" that must be included on a ticket (art. 3) or baggage check (art. 4) (App., *infra*, 8a-9a (1a-2a)). In virtually identical language, moreover, both include the notice requirement as such a required "particular" (arts. 3(1)(e) and 4(1)(h)). Both Articles, in their second paragraphs (arts. 3(2) and 4(2)), also impose the same sanction of the air carrier's loss of the protection of the Convention's liability limitation.

Articles 3 and 4 differ sharply, however, in their respective descriptions of the circumstances triggering that sanction. Both Articles explicitly make the liability limitation inapplicable where the carrier fails to deliver the relevant document – a ticket for passengers (art. 3(2)), or a baggage check for baggage (art. 4(2)). Unlike Article 3, however, Article 4 is also explicit in im-

posing that sanction where "the baggage check does not contain the particulars set out at [art. 4(1)](d), (f), and (h) above" (App., *infra,* 9a (2a)). Article 4(1)(h) is the section requiring that the baggage check give notice of the limitation on liability.

Article 4(2) thus appears to distinguish between not delivering a baggage check at all, and delivering a baggage check that fails to contain all of the particulars. It denies the protection of the liability limitation only for the omission of certain explicitly noted particulars. Article 9 does the same for waybills.[8] Particularly because both Articles 4(2) and 9 single out the notice requirement as triggering the sanction, the absence of a comparable clause in Article 3(2) provides support for respondent's view that the parties to the Convention did *not* intend to deny the limitation on liability based on any omission of particulars, including the notice of liability limitation.

The contrasting language in Articles 4 and 9 undercuts the apparent meaning of Article 3, read in isolation, but it does not compel acceptance of respondent's contrary reading.[9] It rather

[8] A comparison of the language contained in Article 3 and Articles 8 and 9, concerning waybills, is to the same effect. Article 8 lists those "particulars" that must be in an waybill, including a statement of the Convention's liability rules (see App., *infra,* 10a-11a (4a)). Article 9, like Article 4(2), specifically isolates that particular, among several others, violations of which deprive the air carrier of the Convention's liability limitation (see App., *infra,* 11a-12a (5a)).

[9] Nor, contrary to the lower courts' decision (Pet. App. A31), is their reading mandated by Article 3(2)'s provision that "[t]he absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention" (Pet. App. B1). That provision simply makes explicit that the rules of the Warsaw Convention, *including its provisions for loss of liability limitation in certain instances,* apply notwithstanding "the absence, irregularity, or loss of the passenger ticket." The Reporter of CITEJA's Second Commission made just this point on numerous occasions in responding to the concern, expressed by some delegates, that parties might, just as the lower courts did in this case, misread the phrase as somehow contradicting the Convention's sanction provision. See App., *infra,* 47a-49a (34a-37a), 52a-53a (39a-40a), 88a-91a (69a-71a); see also *id.* at 22a (16a), 23a (17a), 25a (19a) (original language). Indeed, this very concern prompted the CITEJA to amend the sanction provisions concerned with passenger tickets (art. 3(2)),

creates a dilemma between the most plausible reading of Article 3, which gives force to its requirement that a "ticket" be delivered, and the structure of Articles 4 and 9, which suggests that an explicit withdrawal of the liability limitation would have been set forth if intended. In such circumstances, " 'to ascertain [Article 3(2)'s] meaning we may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties' " (*Air France* v. *Saks,* 470 U.S. at 396 (quoting *Choctaw Nation of Indians* v. *United States,* 318 U.S 423, 431-432 (1943); *Societe Nationale Industrielle Aerospatiale* v. *United States District Court of the Southern District of Iowa,* slip op. 10-11)).

2. "[T]he 'travaux preparatories' of the Warsaw Convention are published and generally available to litigants [and] courts frequently refer to these materials to resolve ambiguities in the text." *Air France* v. *Saks,* 470 U.S. at 400 (citations omitted). They show that, virtually from the outset, the persons responsible for negotiating and drafting the treaty intended that the limitation of liability would not be available if notice of that limitation were not included in a passenger ticket, baggage check, or waybill. There is no compelling evidence that the treaty drafters at any time decided to distinguish, in that regard, passenger tickets from baggage checks and waybills.

a. The treaty drafters had early on recognized the need for sanctions for non-compliance with provisions of the Convention (App., *infra,* 22a-23a (16a)). They adopted the "eminently practical" scheme of depriving a carrier of the benefits of the Convention after determining that they could not rely on each

baggage checks (art. 4(2)), and waybills (art. 18 (then numbered 17), to eliminate any possible contention that a carrier could avoid any sanction simply by not issuing any ticket in the first instance. See App., *infra,* 91a-92a (71a-72a); see also *id.* at 57a (45a-46a). Finally, both Articles 4(2) and 5(2) refute the lower courts' suggestion that the omission of a particular from a travel document is simply an "irregularity," which does not trigger the sanction provision. Those Articles contain the identical clause, yet the Convention expressly denies the liability limitation where an air carrier fails to set forth on the baggage check or waybill specified particulars. See App., *infra,* 8a-9a (2a), 9a-10a (2a-3a), 11a-12a (5a).

nation to adopt the necessary domestic penal legislation (*id.* at 47a-49a (35a-37a), 54a-55a (42a)). The withdrawal of the liability limitation as a sanction for failure to provide notice of that limitation was first advanced in the draft proposal regarding waybills prepared by CITEJA's Second Commission (*id.* at 56a-57a (44a-45a); see *id.* at 51a-52a (38a-39a) (CITEJA debate)).

The same scheme was subsequently applied both to passenger tickets and baggage checks in the draft agreement of the Second Commission concerning both the waybill and the air carrier's liability towards shippers and passengers (App., *infra,* 92a (72a-73a), 94a-96a (75a-77a)). The requirement of a notice of limited liability was set forth, in Articles 3 and 4 of the new draft, as a separate paragraph in the same Article setting forth the required particulars.[10] In that respect those Articles differed from the waybill provision, where it was set forth in a separate Article from the particulars themselves (App., *infra,* 97a (78a)).

The sanction provision in Articles 3 and 4 of the Second Commission draft stated that an air carrier that failed to draw up a ticket or baggage check containing the listed particulars could not invoke the Convention's liability limitation (App., *infra,* 95a (86a), 96a (77a)). Article 4(2) specifically referred to particulars set forth at 4(1)(a)-(d) as triggering the sanctions (App., *infra,* 96a (77a)). It did not refer to the particulars then listed in Article 4(1)(e) and (f), which were unique to baggage checks. Article 3(2), which contained the same initial four particulars as Article 4, at Article 3(1)(a)-(d), but did not contain particulars (e) and (f), simply provided that "if the carrier did not establish a passenger ticket containing the particulars indicated above, * * * the carrier would not be entitled to rely on the provisions of the Convention which exclude or limit his responsibility" (App., *infra,* 95a (76a)). In neither Article 3 nor 4 did the sanction provision refer explicitly to the required state-

[10] The relevant sentence provided that "[t]he passenger ticket must also contain a statement that the transportation is subject to the rules relating to liability established by this Convention" (App., *infra,* 95a (75a); see *id.* at 96a (76a) (art. 4)).

ment of limited liability, which was set out in the Article with, but separate from, the list of particulars. However, the accompanying CITEJA working papers evidence that the drafters intended the limitation of liability to be inapplicable when the carrier failed to give the required notice on either a passenger ticket or baggage check. The Second Commission's Report states that the "same" sanction shall apply as under the Articles dealing with waybills for the transportation of goods, which expressly provide that a carrier cannot invoke the liability limitation in the absence of the required notice on the waybill regarding those liability rules (App., *infra,* 88a (68a), 97a (78a); see also *id.* at 56a-57a (43a-45a) (prior version)). See *id.* at 92a (73a) ("[T]he sanction for transporting passengers without regular tickets is the same as that for transportation of baggage and goods."); see also *ibid.* ("The remark concerning passengers applies to their baggage as well: a special article covers the baggage check.").

b. The same basic treaty structure persisted until the time that CITEJA approved of its final draft agreement for submission to the Warsaw Convention. While some changes were made in the language of the relevant provisions during CITEJA's final drafting sessions (and resulted in frequent renumbering of Articles), there is no suggestion in CITEJA's working papers that any of those changes were intended to modify the operation of the sanction clause.[11] None of the changes made – nor, indeed, any of those proposed – sought to

[11] The principal modification adopted in the CITEJA final draft, moreover, applied to passenger tickets, baggage checks, and air waybills alike, and was intended to guard against an unduly narrow reading of the sanction's scope. The amendment addressed a Brazilian delegate's concern that the statement in Article 5 (repeated in Articles 3 and 4) – that the absence, irregularity, or loss of a document did not affect the existence or validity of the contract – might be misconstrued to mean that an air carrier would lose the liability limitation only if there was a defect in a document and not when there was no document at all (App., *infra,* 88a-91a (68a-71a)). Despite the Reporter's assurances that no clarifying language was needed, the delegates voted to eliminate any possible ambiguity by redrafting Article 18 (and subsequently the corresponding phrases in Article 3 and 4) to provide that the carrier lost the liability limitation when the carrier failed to draw up a ticket, or when a ticket containing the certain particulars was not drawn up (App., *infra,* 90a-92a (70a-72a) ("If, for

single out passenger tickets for different treatment. Nor were any directed to the notice requirements.[12] CITEJA's final report to the Convention delegates stressed, like its earlier reports, that the same sanctions applied equally to passenger tickets, baggage checks, and waybills (App., *infra,* 107a (101a) ("[T]he sanction given for the transportation of passengers without a ticket or with a ticket that does not conform to the Convention is the same as that given for the transportation of baggage and that of merchandise.")).

c. The contrasting language in Articles 3, 4, and 9, upon which respondent KAL principally relies, is the product of two amendments adopted at the Warsaw Conference itself. An examination of the circumstances and objectives of both of those amendments suggests that any implication derived from a comparison of the language of Article 3 with the language and structure of Articles 4 and 9—that the parties to the Convention intended a different result under Article 3—does not accurately reflect the parties' true intent. Neither amendment purported to distinguish between Articles 3 and 4. Nor was either prompted by an intent to allow the liability limitation to remain in effect where notice of it had not been provided. Indeed, one of the amendments was proposed to make it clear that the limitation would be inapplicable under Article 3 if the carrier failed to comply with the notice requirement.

To be sure, the first amendment, which was proposed by the Greek delegation, was intended to limit the circumstances under which the liability limitation would be inapplicable under

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international transportation, the carrier accepts goods without a waybill having been made out, or if the waybill does not contain all of the particulars set out in Articles 9(a) to (g) inclusive, etc. * * *.")). See note 9, *supra.*

[12] Proposals to weaken the sanction provisions were offered during preparation of CITEJA's final draft, by a Greek delegate and were rejected as they had been once before (App., *infra,* 51a-53a (38a-40a), 82a-83a (62a-64a)). Those proposals were exclusively concerned with denying the limitation of liability for defects in setting forth the particulars listed in Article 3's first paragraph. These unsuccessful proposals therefore did not even suggest that the sanction was inappropriate for failure to satisfy the notice requirement, which was then set forth separately from the list of particulars.

Articles 3 and 4 (App., *infra,* 116a-118a (111a-112a)). But that proposal rendered the sanction inapplicable only as to failures to satisfy the particulars then listed in Article 3(1), some of which were also listed in Article 4(1). Significantly, at the time the Greek delegation offered its amendment, CITEJA's final draft was under consideration, which did *not* list the notice requirement as one of the "particulars" in Article 3(1) or Article 4(1), but which rather set it forth separately (see J.A. 182, 183; see also App., *infra,* 114a (109a) (amendments submitted prior to Conference)).

As explained by the Greek delegation, an amendment was necessary because the sanction (loss of liability limitation) was too severe where an error in one of the listed particulars was the result of the negligence of an employee of the carrier (App., *infra,* 116a-117a (111a-112a); see also *id.* at 51a-53a (38a-40a), 82a-83a (62a-64a) (prior unsuccessful efforts)). The illustrations offered by the Greek delegation never referred to the notice requirement (*ibid.*).[13] The Conference delegates agreed with the Greek concerns and, accordingly, they omitted altogether the clause in Article 3(2)'s sanction provision that applied the sanction where a carrier delivered a ticket not containing one of the listed particulars (J.A. 147-148); and in Article 4(2), the delegates revised the clause to remove those same particulars from the list of particulars that triggered the sanction (J.A. 154). However, at the time of the delegates' consideration of the amendment (see *id.* at 153-154), Article 4 contained other particulars not set forth in Article 3, and as to which the delegates wanted the sanction to apply. Thus Article 4—but not Article 3—continued to make references to the withdrawal of the liability limitation for failure to comply with certain particulars.

At the same time, the Japanese delegation successfully proposed a second amendment to Articles 3 and 4, which was intended to make it clear that the liability limitation would be inapplicable where a carrier failed to include the required notice

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[13] The Greek delegation referred to negligent omissions in "the place of issuance," "point of departure," "[carrier] name and address," or "an intermediate stop point" (App., *infra,* 116a (111a)).

on the passenger ticket or the baggage check (App., *infra,* 118a (113a)). This amendment was formulated on the basis of the language in the draft treaty proposed by CITEJA and was offered before, and not coordinated with, consideration of the Greek delegation's amendment.

The Japanese delegation was apparently concerned by the fact that the draft agreement prepared by CITEJA never directly stated that the limitation on liability would be lost in the absence of the required notice (see App., *infra,* 118a (113a)). Their concern was heightened with respect to Article 4 (*ibid.*), presumably because the sanction provision in Article 4(2), unlike Article 3(2), specifically listed only some of the preceeding particulars as triggering the sanction provision and, hence, might more readily have been misconstrued as excluding any other requirement not specifically mentioned, including the notice requirement. The Japanese delegation accordingly recommended that the notice requirement be listed in both Articles 3 and 4 as a "compulsory particular" (*i.e.*, a particular that triggers the sanction) (*ibid.*).[14] Significantly, however, the Convention delegates appear to have treated the amendment to Article 3 as merely technical in nature and without substantive effect.[15]

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[14] For similar reasons, the Conference decided to modify the wording of the Articles concerned with air waybills, including Article 9. CITEJA's final draft, like previous drafts, listed the notice requirement for waybills in Article 9, separately from both Article 8, which listed the particulars, and Article 17, which contained the sanction provision. In order to "retain systematic agreement with the other parallel articles" (presumably Articles 3 and 4), the Conference delegates, at the behest of the drafting committee, placed the contents of Article 9 as a particular within Article 8 and, with conforming amendments, renumbered as Article 9 what had been Article 17 (see *Second International Conference on Private Aeronautical Law Minutes* 199-200 (R. Horner & D. Legrez trans. 1975) [hereinafter *Second International Conference Minutes*]; see also J.A. 161).

[15] A Conference committee was responsible for organizing the various amendments and describing each as a "question of substance," of either primary or secondary importance, or as a mere technical "question of wording" ("rédaction") (see *Second International Conference Minutes,* 24-27; J.A. 194-206). The committee did not directly place the Japanese amendment to Article 3 under any of these categories, but the committee did include a cross-reference to the Japanese amendment to Article 4 and indicated the need "to take up the same general *wording* formula" (J.A. 197, 198 (emphasis added); App., *infra,* 114a (109a)). The absence of any discussion of the proposed Japanese amendment of Article 3 in the Conference's minutes also further suggests that the amendment was not regarded as substantive in nature.

The Greek and Japanese amendments together, however, had a wholly unintended consequence. The resulting language, which lists the notice requirement as a particular (the Japanese amendment), and omits from the sanction provision the phrase withdrawing the limitation on liability where there is a failure to set forth particulars (the Greek amendment), suggests an intention to eliminate any sanction for an air carrier's violation of Article 3's notice requirement. While it is unclear why this went undetected, it seems quite evident from the available historical information that the difference in language does not result from an intention to omit, as to passenger tickets, the sanction that is applicable to baggage checks and waybills for violation of the notice requirement.

3. A related provision of the Warsaw Convention also makes such a distinction improbable. The likely objective of the notice requirement, equally applicable to tickets, baggage checks, and air waybills, was to allow individuals to exercise their right under Article 22 to persuade the carrier to agree to a higher limit of liability (App., *infra,* 12a-13a (5a-6a)) or, alternatively, to obtain added protection from loss by purchasing private insurance.[16] In the absence of notice, however, the passenger or shipper of goods is effectively deprived of his rights under Article 22. As described by the Second Circuit in *Lisi* v. *Alitalia-Linee Aeree Italiane, S.p.A.,* 370 F.2d 508 (1966), aff'd by an equally divided court, 390 U.S. 455 (1968) (quoting *Mertens* v. *Flying Tiger Line, Inc.,* 341 F.2d 851, 856-857, cert. denied, 382 U.S. 816 (1965)), " 'there would

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[16] The right to contract for a higher liability limitation was an essential part of the Convention throughout its drafting history. The very first draft proposals included that right. See App., *infra,* 22a (15a-16a), 24a (18a-19a), 26a (20a).

be little reason [for Article 22] to require that the ticket state that the liability of the carrier is limited (art. 3(1)(e)), and to require that such a ticket be delivered to the passenger unless the Convention also required that the ticket be delivered in such circumstances as to afford the passenger a reasonable opportunity to take * * * self-protective measures.' " See also 1 International Civil Aviation Organization, *International Conference on Private Air Law—The Hague, September 1955—Minutes* 89-90 (1956) [hereinafter *Hague Minutes*].[17]

[17] Common carrier law prevailing at the time also makes it unlikely that the treaty drafters intended to draw a distinction between passenger tickets, baggage checks, and air waybills. The requirement of notice for application of the liability limitation was consistent with the then-settled principle of common carrier law allowing a common carrier to limit its liability (in the absence of negligence), if at all, only by express contract. See 2 T. Michie, *A Treatise on the Law of Carriers* §§ 1158-1183, 1328-1352 (1915); 1 R. Hutchins, *A Treatise on the Law of Carriers Administered in the Courts of the United States, Canada, and England* §§ 401-402 (1906); see also *New Jersey Steam Navigation Co.* v. *Merchant's Bank*, 47 U.S. (6 How.) 344, 382-385 (1848); cf. *Hague Minutes* 67 (remarks of Mr. Ambrosini (Italy)) ("His delegation also wished to have a sanction in the case where the carrier did not deliver a ticket or the ticket did not state that the carriage was subject to the Warsaw Convention. He recalled, in support of his position, that certain legislations, among them the law of Italy, provided that any clause in a contract limiting liability must not only be accepted by the parties but also signed. Therefore, to delete the sanction from the Convention would be going too far."); J.A. 225-226 (remarks of Mr. Ambrosini). The purpose of the express contract was to ensure that the shipper (or passenger) had voluntarily agreed to the limitation. The Warsaw Convention's notice requirement was far less rigorous than the voluntariness inquiry engaged in by courts at the time (see 2 T. Michie, *supra*, §§ 1178-1183, 1199-1219, 1354-1363; R. Hutchins, *supra*, §§ 406-418; see also *New Jersey Steam Navigation Co.*, 47 U.S. (6 How.) at 382-383), presumably because the Convention was intended to aid the then-fledgling aviation industry (cf. *TWA, Inc.*, v. *Franklin Mint Corp.*, 466 U.S. at 264-265 (Stevens, J., dissenting); H. Drion, *Limitation of Liability in International Air Law* 15 (1954)). But the sanction scheme retained in the Convention shows that some minimal evidence of voluntariness was required to legitimatize such an extraordinary limitation on liability. Significantly, there was no distinction in common carrier law in the relevant liability rules governing passenger tickets, baggage checks, and waybills.

4. Finally, "the practical construction adopted by the parties" to the Warsaw Convention does not compel a different result. *Air France* v. *Saks*, 470 U.S. at 396 (citation omitted). The Executive Branch's view on this question is long standing and entitled to "great weight." *Societe Nationale Industrielle Aerospatiale* v. *United States District Court for the Southern District of Iowa*, slip op. 12 n.19; *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U.S. 176, 184-185 (1982). Over twenty years ago, we advised this Court of our views on this issue in response to this Court's invitation in *Lisi* (No. 67-70).[18] We advanced then the same construction of Article 3's sanction provision that we press now. Contrary to claims made in that case (see J.A. 289, 291), moreover, our *Lisi* submission did not represent a departure from our previous position. The United States' proposal at the Hague Conference in 1955 to amend Article 3(2) of the Warsaw Convention, which made explicit what we believe had previously been implicit in that Article—that the sanction should apply in the absence of fair notice—was merely clarifying in that respect. See *Hague Minutes* 61 (summary of remarks of Mr. Calkins (U.S.)) ("His delegation did not agree in all respects with the Rio Protocol. However, it did agree with the retention of the present sanction requirements in general for failure to set forth the appropriate specifications on the tickets."). The United States did not there state that the sanction would not apply in the absence of such amendment. The United States Senate's failure to consent to ratification of the Hague Protocol was also not based on any dissatisfaction with the sanction provision, as amended. See generally, Lowenfeld & Mendelsohn, *supra*, 80 Harv. L. Rev. at 512.

[18] An even earlier formal expression of the government's view is the CAB's promulgation in 1963 of a rule describing the notice that must be included in a passenger ticket by "each air carrier and foreign air carrier which, to any extent, *avails itself of the limitation on liability to passengers provided by the Warsaw Convention.*" 28 Fed. Reg. 11775-11777 (1963) (codified at 14 C.F.R. 221.175(a) (emphasis added)).

Nor do we think that the contrary views of other signatories to the Warsaw Convention should be controlling.[19] While those views are normally entitled to "considerable weight" (*Air France* v. *Saks*, 470 U.S. at 404 (citation omitted)), they are less weighty in this case for two reasons. First, they conflict with the view expressed by the United States, which is also a party to the Convention. Hence, there is no consensus among the parties. Second, unlike the United States, those nations have all ratified the Hague Protocol, which, among other things, amended the Convention to make explicit that the liability limitation is lost unless notice of it is given on the passenger ticket. Those nations are therefore less interested than the United States in the Warsaw Convention's original meaning. Moreover, their ratification of the Hague Protocol suggests their agreement with our basic view that the liability limitation should be lost in the absence of the required notice.

B. The Montreal Agreement's Ten-Point Type Standard Supplies the Measure for Determining Respondent KAL's Compliance With the Warsaw Convention's Requirement That it Provide Notice of the Convention's Liability Rules on a Passenger's Ticket

We also believe that KAL did not satisfy the Warsaw Convention's notice requirement on those passenger tickets that did not include notice of the applicability of the Convention's liability rules in at least ten-point type, as required by the Montreal Agreement. The court of appeals' contrary view ignores the relationship, both historical and legal, between the Montreal Agreement and the Convention. By replacing a clear standard with an unclear one, it undermines the certainty needed by air carriers, passengers, and courts alike. It also fails to give appropriate weight to the Executive Branch's judgment regarding the relationship between type size and notice to passengers.

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[19] See *Ludecke* v. *Canadian Pac. Airlines, Ltd.*, 98 D.L.R.3d 52 (Can. 1979), rev'g 53 D.L.R.3d 636 (Que. C.A. 1974), aff'g in part and rev'g in part 12 Av. Cas. (CCH) ¶ 17,191 (Que. Super. Ct. 1971); 67-70 United Kingdom and Northern Ireland Amici Br.; 67-70 Republic of Italy Amicus Br.; see also J.A. 306-320 (67-70 Canada Amicus Br.).

1. First, the lower courts failed to appreciate the special relationship between the Montreal Agreement and the Warsaw Convention. The Montreal Agreement is not merely a private agreement among air carriers approved by the federal government. As the title of the agreement makes plain, it is an "*Agreement Relating to Liability Limitations of the Warsaw Convention and Hague Protocol*" (Pet. App. B4), which commits the signators to enter into special contracts, pursuant to Article 22(1) of the Convention, including an increased liability limitation of $75,000. The Montreal Agreement sets forth explicitly the notice of limitation of liability, required to be printed on the ticket "in type at least as large as 10 point modern type and in ink contrasting with the stock" (Pet. App. B5). This very specific notice requirement is plainly intended to define the way in which the Convention's corresponding notice provision is to be satisfied (*id.* at A38-A39). The Montreal Agreement is consistent with the terms of the Convention and does not purport, or need to, "amend" the Convention itself in order to be legally effective.[20] Hence, although the Agreement is binding only on the carriers who were parties to it—and, of course, does not

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[20] Respondent may mistakenly argue that we took a different position in our submission to the Court in *Lisi*, where we advised the Court that "the [CAB] has never been presented with any carrier agreement purporting to fix the size of type or other typographical details of the Warsaw Convention notice" (67-70 U.S. Amicus Br. at 9 (merits) (J.A. 305); see also *id.* at 2 (J.A. 300). We were not, however, there addressing the significance of the Montreal Agreement, which was not relevant to the disposition of *Lisi* because the airplane accident at issue had occurred prior to that Agreement. We were instead simply refuting the air carrier's argument in *Lisi* that CAB approval of a uniform ticket proposed by the International Air Transport Association constituted a CAB determination that the Warsaw Convention's requirement that a ticket provide notice of the Convention's liability limitation had been satisfied. In our brief at the jurisdictional stage in *Lisi*, we also made clear that compliance with the Montreal Agreement's notice requirement would satisfy the Warsaw Convention's notice requirement, and argued that, for that reason, the lower court's decision in *Lisi* was of little prospective importance. See 67-70 U.S. Amicus Br. at 9 (jurisdictional stage).

bind other nations[21]—it is fair to hold those parties to the bargain struck. Respondent is a party to the Montreal Agreement (see Pet. App. B9; 14 C.F.R. Pt. 203).

As shown by both the history and terms of the Montreal Agreement, moreover, its notice provision is an essential part of that bargain. The United States agreed to withdraw its notice of denunciation of the Convention only after exacting a few critical concessions from the carriers.[22] The Agreement consists of only two numbered paragraphs, one of which is the requirement of a particular form of notice (Pet. App. B4-B6). The air carriers agreed to both in order to avoid losing the benefit of the Convention's liability limitations altogether in United States flights. Having done so, they should not now be allowed to retain the benefit of that limitation where, as in this case, they have ignored the very requirement that preserved it.

2. In any event, the ten-point type standard should be applied because it is the measure long ago adopted by the expert agency (CAB) then responsible for determining the sufficiency of such notice on passenger tickets. Even before the Montreal Agreement, the CAB promulgated a rule requiring foreign air carriers to include the notice of liability rules in ten-point type. See 28 Fed. Reg. 11775-11777 (1963) (codified at 14 C.F.R. 221.175(a)) (reproduced at Pet. App. B7). While that rule did not purport to construe the Warsaw Convention itself, there is no reason why a court should apply a different standard of ade-

[21] The United States did, however, obtain formal assurance of foreign governments whose carriers were participating in the Agreement that those governments approved of or at least would permit the Agreement to go into effect subject only to termination on 12 months' notice. See Lowenfeld & Mendelsohn, *supra*, 80 Harv. L. Rev. at 593-594.

[22] The United States unsuccessfully sought at the Hague Conference in 1955 to amend Article 3 of the Warsaw Convention to specify more precisely the notice required, including the size of type (larger than ten-point) (see J.A. 215-216). The treaty negotiating history suggests that the delegates preferred to allow each country to regulate the notice required. See Lowenfeld & Mendelsohn, *supra*, 80 Harv. L. Rev. at 513-515. The absence in the Hague Protocol of a more specific notice provision was one reason offered by those opposed to Senate approval of the Protocol. See *id.* at 513.

quacy in Warsaw Convention cases within our jurisdiction. Obviously some standard is necessary and it is better, for passengers and airlines alike, to have a clear, settled standard than it is to require courts and juries to engage in case-specific factual inquiry into the "adequacy" of notice in individual cases. Certainly such a fragmented approach would not further the Warsaw Convention's goal of "uniformity" in international air transportation. Cf. *TWA, Inc.* v. *Franklin Mint Corp.*, 466 U.S. at 256.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General

JOHN R. BOLTON
Assistant Attorney General

DONALD B. AYER
Deputy Solicitor General

RICHARD J. LAZARUS
Assistant to the Solicitor General

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APPENDIX A

RELEVANT PROVISIONS OF THE WARSAW CONVENTION (CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL TRANSPORTATION BY AIR, CONCLUDED AT WARSAW, OCTOBER 12, 1929, 49 STAT. 3000 *ET SEQ.*)

[Official French Language Version]

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CHAPITRE II – TITRES DE TRANSPORT

SECTION I – BILLET DE PASSAGE.

Article 3.

(1) Dans le transport de voyageurs, le transporteur est tenu de délivrer un billet de passage qui doit contenir les mentions suivantes:

a) le lieu et la date de l'émission;

b) les points de départ et de destination;

c) les arrêts prévus, sous réserve de la faculté pour le transporteur de stipuler qu'il pourra les modifier en cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international;

d) le nom et l'adresse du ou des transporteurs;

e) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

(2) L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence, ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois si le transporteur accepte le voyageur sans qu'il ait été délivré un billet de passage, il n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité.

Article 4.

(1) Dans le transport de bagages, autres que les menus objets personnels dont le voyageur conserve la garde, le transporteur est tenu de délivrer un bulletin de bagages.

(2) Le bulletin de bagages est établi en deux exemplaires, l'un pour le voyageur, l'autre pour le transporteur.

(3) Il doit contenir les mentions suivantes;

a) le lieu et la date de l'émission;

b) les points de départ et de destination;

c) le nom et l'adresse du ou des transporteurs;

d) le numéro du billet de passage;

e) l'indication que la livraison des bagages est faite au porteur du bulletin;

f) le nombre et le poids des colis;

g) le montant de la valeur déclarée conformément à l'article 22 alinéa 2;

h) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

(4) L'absence, l'irrégularité ou la perte du bulletin n'affecte ni l'existence, ni la validité du contrat de transport que n'en sera pas moins soumis aux règles de la présente Convention. Toutefois si le transporteur accepte les bagages sans qu'il ait été délivré un bulletin ou si le bulletin ne contient pas les mentions indiquées sous les lettres d), f), h), le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité.

SECTION III. – LETTRE DE TRANSPORT AÉRIEN.

Article 5.

(1) Tout transporteur de marchandises a le droit de demander à l'expéditeur l'établissement et la remise d'un titre appelé: "lettre de transport aérien"; tout expéditeur a le droit de demander au transporteur l'acceptation de ce document.

(2) Toutefois, l'absence, l'irrégularité ou la perte de ce titre n'affecte ni l'existence, ni la validité du contrat de transport qui n'en sera pas moins soumis aux règles de la présente Convention, sous réserve des dispositions de l'article 9.

Article 6.

(1) La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux et remise avec la marchandise.

(2) Le premier exemplaire porte la mention "pour le transporteur"; il est signé par l'expéditeur. Le deuxième exemplaire porte la mention "pour le destinataire"; il est signé par l'expéditeur et le transporteur et il accompagne la marchandise. Le troisième exemplaire est signé par le transporteur et remis par lui à l'expéditeur après acceptation de la marchandise.

(3) La signature du transporteur doit être apposée dès l'acceptation de la marchandise.

(4) La signature du transporteur peut être remplacée par un timbre; celle de l'expéditeur peut être imprimée ou remplacée par un timbre.

(5) Si, à la demande de l'expéditeur, le transporteur établit a lettre de transport aérien, il est considéré jusqu'à preuve contraire, comme agissant pour le compte de l'expéditeur.

Article 7.

Le transporteur de marchandises a le droit de demander à l'expéditeur l'établissement de lettres de transport aérien différentes lorsqu'il y a plusieurs colis.

Article 8.

La lettre de transport aérien doit contenir les mentions suivantes:

a) le lieu où le document a été créé et la date à laquelle il a été établi;

b) les points de départ et de destination;

c) les arrêts prévus, sous réserve de la faculté, pour le transporteur, de stipuler qu'il pourra les modifier en cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international;

d) le nom et l'adresse de l'expéditeur;

e) le nom et l'adresse du premier transporteur;

f) le nom et l'adresse du destinataire, s'il y a lieu;

g) la nature de la marchandise;

h) le nombre, le mode d'emballage, les marques particulières ou les numéros des colis;

i) le poids, la quantité, le volume ou les dimensions de la marchandise;

j) l'état apparent de la marchandise et de l'emballage;

k) le prix du transport s'il est stipulé, la date et le lieu de paiement et la personne qui doit payer;

l) si l'envoi est fait contre remboursement, le prix des marchandises et, éventuellement, le montant des frais;

m) le montant de la valeur déclarée conformément à l'article 22, alinéa 2;

n) le nombre d'exemplaires de la lettre de transport aérien;

o) les documents transmis au transporteur pour accompagner la lettre de transport aérien;

p) le délai de transport et indication sommaire de la voie à suivre (*via*) s'ils ont été stipulés;

q) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

Article 9

Si le transporteur accepte des marchandises sans qu'il ait été établi une lettre de transport aérien, ou si celle-ci ne contient pas toutes les mentions indiquées par l'article 8 [a) à i) inclusivement et q)], le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité.

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CHAPITRE III. – RESPONSABILITÉ DU TRANSPORTEUR

Article 20.

(1) Le transporteur n'est pas responsable s'il prouve qui lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

(2) Dans les transports de marchandises et de bagages, le transporteur n'est pas responsable, s'il prouve que le dommage provient d'une faute de pilotage, de conduite de l'aéronef ou de navigation, et que, à tous autres égards, lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage.

Article 21.

Dans le cas où le transporteur fait la preuve que la faute de la personne lésée a causé le dommage ou y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

Article 22.

(1) Dans le transport des personnes, la responsabilité du transporteur envers chaque voyageur est limitée à la somme de cent vingt cinq mille francs. Dans le cas où,

d'aprés la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois par une convenion spéciale avec le transporteur, le voyageur pourra fixer une limite de responsabilité plus élevée.

(2) Dans le transport de bagages enregistrés et de marchandises, la responsabilité du transporteur est limitée à la somme de deux cent cinquante francs par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

(3) En ce qui concerne les objets dont le voyageur conserve la garde, la responsabilité du transporteur est limitée à cinq mille francs par voyageur.

(4) Les sommes indiquée ci-dessus sont considérées comme se rapportant au franc français constitué par soixante-cinq et demie milligrammes d'or au titre de neuf cents millièmes de fin. Elles pourront être converties dans chaque monnaie nationale en chiffres ronds.

Article 23.

Toute clause tendant à exonérer le transporteur de sa responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

Article 24.

(1) Dans les cas prévus aux articles 18 et 19 tout action en responsabilité, à quelque titre que ce soit, ne peut être

exercée que dans les conditions et limites prévues par la présente Convention.

(2) Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs.

Article 25.

(1) Le transporteur n'aura pas le droit de se prévaloir des dispositions de la présente Convention qui excluent ou limitent sa responsabilité, si le dommage provient de son dol ou d'une faute qui, d'après la loi du tribunal saisi, est considérée comme équivalente au dol.

(2) Ce droit lui sera également refusé si le dommage a été causé dans les mêmes conditions par un de ses préposés agissant dans l'exercice de ses fonctions.

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CHAPITRE V.
DISPOSITIONS GÉNÉRALES ET FINALES

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Article 39

(1) Chacune des Hautes Parties Contractantes pourra dénouncer la présente Convention par une notification faite au Gouvernment de la République de Pologne, qui en avisera immédiatement le Gouvernement de chacune des Hautes Parties Contractantes.

(2) La dénonciation prodvira ses effets six mois après la notification de la dénouncement et seulement à l'égard de la Partie qui y aura procédé.

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[ENGLISH TRANSLATION]

CHAPTER II – TRANSPORTATION DOCUMENTS

SECTION I. – PASSENGER TICKET

Article 3

(1) For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the carrier or carriers;

(*e*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(2) The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability.

SECTION II. – BAGGAGE CHECK

Article 4

(1) For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The name and address of the carrier or carriers;

(*d*) The number of the passenger ticket;

(*e*) A statement that delivery of the baggage will be made to the bearer of the baggage check;

(*f*) The number and weight of the packages;

(*g*) The amount of the value declared in accordance with article 22 (2);

(*h*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(4) The absence, irregularity, or loss of the baggage check shall not affect the existence or the validity of the contract of transportation which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (*d*), (*f*), and (*h*) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability.

SECTION III. – AIR WAYBILL

Article 5

(1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air waybill": every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity, or loss of this document shall not affect the existence or the validity of the contract of transportation which shall, subject to the provisions of article 9, be none the less governed by the rules of this convention.

Article 6

(1) The air waybill shall be made by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign on acceptance of the goods.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate waybills when there is more than one package.

Article 8

The air waybill shall contain the following particulars:

(*a*) The place and date of its execution;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration

shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the consignor;

(*e*) The name and address of the first carrier;

(*f*) The name and address of the consignee, if the case so requires;

(*g*) The nature of the goods;

(*h*) The number of packages, the method of packing, and the particular marks or numbers upon them;

(*i*) The weight, the quantity, the volume, or dimensions of the goods;

(*j*) The apparent condition of the goods and of the packing;

(*k*) The freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(*l*) If the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;

(*m*) The amount of the value declared in accordance with article 22(2);

(*n*) The number of parts of the air waybill;

(*o*) The documents handed to the carrier to accompany the air waybill;

(*p*) The time fixed for the completion of the transportation and a brief note of the route to be followed, if these matters have been agreed upon;

(*q*) A statement that the transportation is subject to the rules relating to liability established by this convention.

Article 9

If the carrier accepts goods without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in article 8 (*a*) to (*i*), inclusive, and (*q*), the carrier shall not be entitled to avail himself of the

provisions of this convention which exclude or limit his liability.

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CHAPTER III – LIABILITY OF THE CARRIER

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Article 20

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the transportation of goods and baggage the carrier shall not be liable if he proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) the sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

Article 24

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

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CHAPTER V GENERAL AND FINAL PROVISIONS

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Article 39

(1) Any one of the High Contracting Parties may denounce this convention by a notification addressed to the Government of the Republic of Poland, which shall at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the party which shall have proceeded to denunciation.

APPENDIX B

CONFERENCE INTERNATIONALE DE DROIT PRIVÉ AÉRIEN (27 OCTOBRE–6 NOVEMBRE 1925)

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[page 12] AVANT-PROJET [Annexé de Circulaire addressée par Ministères des Affaires Étrangères (30 Juin 1925)]

ARTICLE 2.

Le transport international sera constaté par un billet de passage ou une lettre de voiture internationale, mentionnant les points d'arrivée et de destination et, s'il y a lieu, les points de transbordement.

Ce billet de passage sera toujours nominatif et ne pourra être cédé. La lettre de voiture pourra être établie à personne dénommée, à ordre ou à porteur.

La lettre de voiture indiquera notamment la nature et le poids des objets transportés, la déclaration de leur valeur si elle est faite par l'expéditeur, le prix et le mode de fixation du prix de transport et le lieu du payement.

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[page 13] ARTICLE 5.

En aucun cas, la responsabilité du transporteur ne pourra dépasser la somme de dix mille francs par voyageur; toutefois le voyageur pourra en payant une taxe spéciale de garantie se faire garantir contre les risques du transporteur pour une somme déterminée.

Dans le transport des marchandises, la responsabilité du transporteur ne peut dépasser deux cents francs par colis

ou unité sauf déclaration spéciale de valeur faite par l'expéditeur, qui aura toute liberté à cet égard.

Les valeurs ci-dessus sont des valeurs or.

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[page 52]

RAPPORT
DE LA DEUXIEME COMMISSION

RESPONSABILITÉ DU TRANSPORTEUR PAR AÉRONEFS.

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[page 54] *Forme du contrat.* — Le contrat de transport est-il conventuel ou formel? L'opinion unamme de la Commission est que le contrat est conventuel; mais il y a une grande importance pratique à préciser les conditions du transport notamment pour la preuve éventuelle.

Ainsi avons-nous admis que le titre de transport prévu à l'article 3 constate l'existence du contrat mais ne le constitue pas.

Il faut exiger, dans la pratique, l'établissement d'un billet de passage ou d'une lettre de voiture sans que toutefois l'omission de ce titre influe sur l'existence du contrat; il faut aussi que l'expéditeur puisse exiger un récépissé de la marchandise et, à cet égard, il semble que le moyen le plus simple réside dans la remise d'un double de la lettre de voiture certifié par signature ou timbre du transporteur.

Ces lois nationales devront pourvoir, par des prescriptions pénales, à ce que ces exigences soient réellement sactionnées.

Le titre de transport n'est qu'un instrumentum mais il a une importance indéniable. [page 55] Nous avons estimé necessaire d'en préciser la forme, de facon à faciliter l'adoption d'un modéle unique par les diverses entreprises de transports aériens.

Les mentions que doit contenir le titre de transport sont énumérées à l'article 4; elles ne sont pas limitatives et point n'est besoin d'en justifier l'exigence. Nous n'avons pas précisé les documents qui accompagnent éventuellement la lettre de voiture, car il appartient d'une part à chaque État d'en établir la liste et d'autre part au transporteur de refuser une marchandise sans papiers réguliers. Ici nous posons seulement la regle que la lettre de voiture mentionnera à titre de simple inventaire les documents quels qu'ils soient qui lui seront annexés.

Comme pour le transport par chemin de fer nous avons admis que l'expéditeur répond de l'exactitude des mentions inscrites sur la lettre de voiture et que cette responsabilité sera attestée par la signature de l'expéditeur apposée sur la lettre de voiture.

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[page 59]

AVANT-PROJET DE CONVENTION INTERNATIONALE
SUR
LA RESPONSABILITÉ DU TRANSPORTEUR PAR AÉRONEFS.
[Annexé Rapport de la Deuxieme Commission]

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Article 3.

Le transport international sera constaté par un billet de passage ou une lettre de voiture.

[page 60] Le transporteur sera tenu, à la demande de l'expéditeur, de lui délivrer un double de la lettre de voiture dûment certifié.

L'absence ou la perte de ces titres ne préjudicie pas à l'existence et à la validité du contrat de transport.

Article 4

Le billet de passage et la lettre de voiture doivent mentionner:

Les points de depart et de destination;
L'itinéraire à suivre;
Le nom et l'adresse du passager ou de l'expéditeur;
Le nom et l'adresse du transporteur;
Le prix du transport, la date et le lieu du payement;
L'indication de la límite légale de responsabilité et, s'il y a lieu, de la garantie supplémentaire du transporteur suivant l'article 7;
Le lieu et la date de l'emission.
La lettre de voiture doit, en outre, indiquer:
Le nom et l'adresse du destinataire;
La nature de la marchandise et le mode d'emballage;
Le nombre, les marques, les numéros et le poids des colis;
La déclaration de leur valeur, si elle est faite par l'expéditeur, conformément à l'article 7;
Les documents remis au transporteur pour accompagner la lettre de voiture.
La lettre de voiture sera signée par l'expéditeur qui répondra de l'exactitude des mentions qui y sont contenues.

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[page 61] *Article 7.*

En aucun cas la responsabilité du transporteur ne pourra dépasser la somme de dix mille francs par voyageur. Toutefois par une convention spéciale avec le transporteur le voyageur pourra stipuler une limite de responsabilité plus élevée.

Dans le transport des marchandises, la responsabilité du transporteur ne peut dépasser 200 francs par colis, sauf déclaration spéciale de valeur faite par l'expéditeur, auquel cas le transporteur sera tenu de payer la valeur déclarée à moins qu'il ne prouve qu'elle est supérieure à la valeur réelle au point d'arrivée.

Les valeurs ci-dessus sont des valeurs or. Elles pourront être converties dans chaque monnaie nationale en chiffres ronds.

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[page 69] **PROJET DE CONVENTION.**

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également désireux de donner une solution à l'importante question de la responsabilité du transporteur dans les transports internationaux par aéronefs, ont résolu de conclure une Convention et ont en conséquence nommé pour leurs plénipotentiaires, savoir:

. . . . . .

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

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[page 70] *Article 3.*

Le transport international sera constaté par un billet de passage ou une lettre de voiture.

Le transporteur sera tenu, a la demande de l'expéditeur, de lui délivrer un double de la lettre de voiture dument certifié.

L'absence, l'irregularite ou la perte du titre de transport ne préjudicie ni à l'existence ni à la validité du contrat du transport.

Article 4.

Le billet de passage et la lettre de voiture mentionneront notamment:

Les points de départ et de destination;
L'itinéraire à suivre:
Le nom et l'adresse du transporteur;

le prix du transport, la date et le lieu du payement;

L'indication de la limite légale de responsabilité, et, s'il y a lieu, de la garantie supplémentaire du transporteur suivant l'article 7;

Le lieu et la date de l'émission.

La lettre de voiture indiquera, en outre, notamment;

Le nom et l'adresse de l'expéditeur et du destinataire;

Le délai de transport, s'il est stipulé;

La nature de la marchandise et le mode d'emballage;

Le nombre, les marques les numéros et le poids des colis;

La déclaration de leur valeur, si elle est faite par l'expéditeur conformément à l'article 7;

Les documents remis au transporteur pour accompagne la lettre de voiture.

[page 71] La lettre, de voiture sera signée par l'expéditeur qui répondra de l'exactitude des mentions qui y sont contenues.

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Article 7.

La responsabilité du transporteur est limitée à la somme de dix mille francs par voyageur. Toutefois, par une convention spéciale avec le transporteur, le voyageur pourra fixer une limite de responsabilité plus élevée.

Dans le transport des marchandises, la responsabilité du transporteur est limitée à la somme de 200 francs par colis, sauf déclaration spéciale de valeur faite par l'expéditeur, auquel cas le transporteur sera tenu de payer la valeur déclarée à moins qu'il ne prouve qu'elle est supérieure à la valeur réelle au point de destination.

Les valeurs ci-dessus sont des valeurs or. Elles pourront être converties dans chaque monnaie nationale en chiffres ronds.

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[page 82] **MOTION**

Après avoir dressé, à titre d'exemple, la liste des questions dont l'étude devrait immédiatement suivre l'examen du probléme de la responsabilité du transporteur par aéronefs, la Conférence considerant l'importance, l'urgence, la complexite et la nature techniquement juridique de ces questions, exprime le voeu que soit, à bref délai, nommé un Comité special d'Experts chargé de preparer la continuation des travaux de la Conference.

Ce comité serait composé d'un nombre restreint de membres. Son siége normal serait a Paris.

La Conference prie, en conséquence, le Gouvernement français de bien vouloir se mettre en rapport avec les Gouvernements invités à cette Conférence pour examiner la suite à donner à cette recommendation.

ENGLISH TRANSLATION OF EXCERPTS FROM INTERNATIONAL CONFERENCE ON PRIVATE AVIATION LAW (OCTOBER 27-NOVEMBER 6, 1925)

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PRELIMINARY DRAFT. [Annexed to Circular from Foreign Affairs Minister (June 30, 1925)]

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ARTICLE 2.—The international transport shall be verified by a passage ticket or international way-bill, mentioning the points of arrival and of destination and, if necessary, the points of transshipment.

This passage ticket shall always be personal and cannot be transferred. The way-bill may be issued to a specified person, to order, or to bearer.

The way-bill shall indicate, in particular, the nature and weight of the objects carried, the declaration of their value if it is made by the sender, the cost, and the method of fixing the cost of carriage, and the place of payment.

* * * * *

ARTICLE 5.—In no case can the responsibility of the carrier exceed the sum of 10,000 francs per passenger; however, the passenger may, by paying a special guarantee tax, have himself guaranteed against the risks of the carrier for a fixed sum.

As regards the carriage of goods, the responsibility of the carrier may not exceed 200 francs per parcel or unit, except in the case of a special declaration of value made by the sender, who shall have every freedom in this respect.

The above values are gold values.

* * * * *

REPORT OF THE SECOND COMMISSION

Liability of the Air Carrier

* * * * *

Form of the contract

Is the contract of transportation contractual or formal? The unanimous opinion of the Commission is that it is contractual; but there is great practical importance in specifying the transportation conditions, especially for evidence which may be needed at some future time.

We have therefore agreed that the transportation document provided in Article 3 establishes the existence of the contract but does not constitute it.

In practice, a passenger ticket or air waybill must be issued; however, the absence of this document shall not effect the existence of the contract. In addition, the consignor has the right to require a receipt for the goods and, in this regard, it seems that the simplest method is to hand over a copy of the air waybill, certified by the signature or stamp of the carrier.

These national laws must ensure, through penalties, that these requirements are respected.

The transportation document is only an "instrumentum," but it has an undeniable importance. We have felt it necessary to specify its format, in order to facilitate the adoption of a single model by the various air transportation companies.

The particulars that the transportation document is to contain are listed in Article 4. They are not restrictive and there is no need to justify requiring them. We have not specified such documents as may accompany the air waybill, because it is the responsibility of each State to establish a list of them, and it is the carrier's responsibility to refuse goods without the proper documents. We thus establish the rule that the air waybill must simply list the accompanying documents.

As for railway transport, we have agreed that the consignor shall be responsible for the correctness of the particulars listed in the air waybill and that this responsibility will be certified by the signature of the consignor affixed to the air waybill.

* * * * *

Draft of the International Convention on the Liability of Air Carriers

Article 3

International transportation shall be established by a passenger ticket or an air waybill.

The carrier must deliver, upon the request of the consignor, two copies of a duly certified air waybill.

The absence or loss of these documents shall not prejudice the existence or the validity of the contract of transportation.

Article 4

The passenger ticket and the air waybill should contain the following particulars:

The place of departure and destination;

The itinerary to be followed;

The name and address of the passenger or the consignor;

The name and address of the carrier;

The freight cost, the date and place of payment;

A statement of the legal limit of liability and, if necessary, of the additional guarantee of the carrier according to Article 7;

The place and date of issue;

The air waybill should additionally indicate;

The name and address of the consignee;

The nature of the goods and the method of packing;

The number and weight of packages, and particular marks or numbers upon them;

The declaration of their value, if made by the consignor, in accordance with Article 7;

The documents handed over to the carrier to accompany the air waybill.

The air waybill shall be signed by the consignor, who shall be responsible for the correctness of the particulars mentioned therein.

Article 7

In the transportation of persons the liability of the carrier shall be limited to the sum of ten thousand francs per passenger. However, by special contract, the carrier and the passenger may agree to a higher limit of liability.

In the transportation of goods the liability of the carrier shall be limited to 200 francs per package, unless the consignor has made a special declaration of value, in which case the carrier will be liable to pay the declared value unless he proves that the sum is greater than the actual value at the point of destination.

The above-mentioned sums are gold values. They may be converted into national currencies in round figures.

* * * * *

SCHEME OF AGREEMENT.

. . . . . .

likewise desirous of finding a solution for the important question regarding responsibility of the conveying party in international transports by aerial machines, they have decided to enter into an Agreement and as a consequence have appointed their plenipotentiaries, to wit:

. . . . . .

who having become acquainted with their full powers, found in good and due form, having agreed to the following provisions:

* * * * *

Article 3.

International transport shall be established by a travel-ticket or way-bill.

Upon request of the forwarding party, the carrier shall be bound to deliver him a duplicate of the way-bill duly certified.

Lack, irregularity or loss of the transport certificate does not cause prejudice to either the existence or validity of the transport contract.

Article 4.

The travel-ticket and way-bill shall mention in particular:

The place of departure and arrival.

The route followed.

The name and address of carrier.

Cost of transport, date and place of payment.

Indication of the legal limit of responsibility, and, should the case arise, of the supplementary guarantee of the carrier, according to Article 7.

Place and date of issue.

Furthermore, the way-bill shall mention, in particular:

The name and address of the forwarding party and the consignee.

The length of time for transport, if it is stipulated.

Nature of the merchandise and style of packing.

Number and weight of packets, marks and figures indicated thereon.

Declaration of their value, if same is made by the forwarding party, in accordance with article 7.

Documents handed to the carrier to go with the way-bill.

The way-bill shall be signed by the forwarding party who shall be held responsible for the correction of the indications contained therein.

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Article 7.

Responsibility of the conveying party is limited to the sum of ten thousand francs per passenger. Nevertheless, upon special agreement with the conveying party, the passenger shall be able to fix a higher limit of responsibility.

In the conveyance of merchandise, the conveying party's responsibility is limited to the sum of 200 francs per package unless a special declaration of value has been made by the forwarding party, in which case the carrier shall be held liable for the value declared unless he is able to prove it greater than the real value at the place of arrival.

The foregoing values are gold values. They may be converted into every national currency in round figures.

* * * * *

MOTION

After having drawn up, as an example, the list of questions, study of which should immediately follow examination of the problem regarding responsibility of the conveying party, by aerial machine, the Conference, considering the importance, urgency, complexity and technically judicial nature of these questions, expresses the wish that a special Committee of Experts be appointed as soon as possible, on which shall devolve the task of preparing the continuation of the work of the Conference.

This Committee shall be composed of a restricted number of members. Its normal headquarters shall be in Paris.

The Conference, therefore, prays the French Government to be good enough to get into touch with the Governments invited to this Conference to examine the decision to be given with regard to this recommendation.

APPENDIX C

COMITÉ INTERNATIONAL TECHNIQUE D'EXPERTS JURIDIQUE AÉRIENS

COMPTE – RENDU DE LA 1ere SESSION

MAI 1926

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[page 47] RESOLUTION No. 2

Règlement Intérieur du Comité

Le Comité décide d'adopter le Règlement intérieur ci-après:

* * * * *

[page 48] Article 4

Les Commissions prévues à l'article 2 ci-dessus nomment leur Président et les Rapporteurs de chacune des questions inscrites à leur ordre du jour.

Le Rapporteur prépare, sur la question qu'il a été chargé d'étudier, un questionnaire adressé à tous les membres de la Commission, qui doivent, dans un délai fixé par celle-ci lors de l'inscription à l'ordre du jour, adresser directement leur réponse au Rapporteur ainsi qu'une copie au Secrétaire du Comité.

Le Rapporteur établit son Rapport contenant un texte précédé d'un exposé des motifs. Il adresse son Rapport au Secrétaire du Comité pour distribution à tous les membres de la Commission.

La Commission se réunit ensuite sur convocation de son Président pour étudier les rapports élaborés et préparer un

texte à soumettre au Comité. Elle désigne alors les Rapporteurs chargés de présenter ses conclusions au Comité. Elle siège au lieu fixé par son Président, d'accord avec le Président du Comité.

Les textes ainsi préparés sont immédiatement communiqués par le Secrétaire du Comité à tous les membres du Comité.

* * * * *

[page 49] Article 7

Aprés approbation par le Comité, le Rapport Général et les Projets de Conventions sont transmis au Gouvernement français pour communication à tous les Gouvernements en vue de la convocation prochaine de la Conférence Internationale de Droit Privé Aérien.

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RÉSOLUTION No. 3

Le Comité des Experts, estimant qu'il y a lieu d'examiner dans leur ensemble les problèmes du Droit Privé soulevés par la Navigation Aérienne décide de nommer quatre Commissions composées de onze Membres.

Chaque Commission aura à faire l'étude des questions suivantes:

1e Commission

1) Nationalité des aéronefs;
2) Registre aéronautique;
3) Propriété, copropriété, construction et transfert;
4) Droits réels, hypothèques, privilèges et saisie.

2e Commission

1) Régime des transports (transports commerciaux, tourisme, etc.);

2) Lettre de voiture;
3) Responsabilité du transporteur envers les expéditeurs de marchandises et les passagers;
4) Jet de la cargaison et avarie commune;
5) Location des aéronefs.

[page 50] *3e Commission*

1) Dommages et responsabilités envers les tiers (atterrissage, abordage, jet);
2) Limites de responsabilité (Limitation forfaitaire, abandon);
3) Assurances.

4e Commission

1) Condition juridique du Commandant et du personnel;
2) Accidents du personnel et assurances;
3) Régime des passagers;
4) Loi applicable aux actes et aux faits à bord de l'aéronef.

Chacune des Commissions, en examinant les questions mises à son ordre du jour, devra s'occuper des difficultés relatives à la compétence, à la prescription ou aux déchéances.

Le Comité recommande à chacune de ces Commissions, dans l'étude complète qu'elle aura à faire des problèmes qui lui sont confiés, de faire porter tout d'abord son examen sur les questions suivantes:

1e *Commission:* Registre Aéronautique, propriété et hypothèque;

2e *Commission:* Lettre de voiture et, éventuellement, examen des modifications qui seraient demandées au Projet de Convention de Paris de 1925;

3e *Commission:* Dommages causés aux personnes et aux biens se trouvant à la surface;

4e *Commission:* Condition juridique du Commandant de l'aéronef.

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ENGLISH TRANSLATION OF EXCERPTS FROM COMPLETE PROCEEDINGS OF CITEJA'S FIRST SESSION MAY 1926

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RESOLUTION NO. 2

INTERIOR REGULATIONS OF THE COMMITTEE

The Committee decides to adopt the following interior regulations:

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Article 4.

The Commissions provided for in Article 2 above will appoint their President and the Reporters for each of the items set down on the Agenda.

The Reporter will prepare, on the item which he has been charged to study, a questionaire addressed to all the members of the Commission, who should, within a period fixed by the Commission at the time the item is placed on the Agenda, send their reply direct to the Reporter as well as a copy to the Secretary of the Committee.

The Reporter will prepare his report, consisting of text preceded by a statement of motives. He will send his report to the Secretary of the Committee for distribution to all the members of the Commission.

The Commission will then meet on convocation by its President in order to study the reports made and to pre-

pare a text to be submitted to the Committee. It will thereupon designate the Reporters charged with the presentation of its conclusions to the Committee. It will sit at the place fixed by its President with the concurrence of the President of the Committee.

The text thus prepared will be immediately communicated by the Secretary of the Committee to all the members of the Committee.

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Article 7.

After approval by the Committee, the General Report and the draft Conventions will be transmitted to the French Government for communication to all the Governments with a view to an early convocation of the International Conference on Aerial Private Law.

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RESOLUTION No. 3.

The Committee of Experts, considering that it is necessary to examine in their entirety the problems of private law raised by air navigation, decides to appoint four Commissions composed of eleven Members.

Each Commission will make a study of the following questions:

1st Commission.

(1) Nationality of aircraft;
(2) Aeronautical register;
(3) Ownership, co-ownership, construction and transfer;
(4) Vested rights, mortgages, privileges and seizures.

2nd Commission

(1) Category of transport (commercial transport, private pilots, etc. . . .);

(2) Way-bill;
(3) Responsibility of carriers towards consignors of goods and towards passengers;
(4) Jettisoning of cargo and general damage;
(5) Hiring of aircraft.

3rd Commission

(1) Damage and responsibility towards third parties (landing, collision, jettison);
(2) Limits of responsibility (contractual limitation, abandonment);
(3) Insurance.

4th Commission

(1) Legal status of the commander and crew;
(2) Accidents to the crew, and insurance;
(3) Status of passengers;
(4) Law applicable to acts committed on board the aircraft.

Each of these Commissions, in examining the items set down on its Agenda, should take up the matter of difficulties relating to competency, prescription or forfeiture.

The Committee recommends to each of these Commissions, in the complete study it will have to make of the problems which are confided to it, to bring its examination to bear in the first place on the following questions:

1st Commission: Aeronautical register, ownership and mortgages;
2nd Commission: Way-bill and, eventually, examination of the modifications to be asked for in the Paris draft Convention of 1925;
3rd Commission: Damage caused to persons and property on the surface;
4th Commission: Legal status of the Commander of the aircraft.

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APPENDIX D

COMITÉ INTERNATIONAL TECHNIQUE D'EXPERTS JURIDIQUE AÉRIENS

COMPTE – RENDU DE LA 2e SESSION

AVRIL 1927

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[Compte-rendu provisoire de la deuxième seánce du CITEJA (5 Avril)]

[page 24] M. COGLIOLO (Italie) formule une critique contre le paragraphé 2 de l'article 3, ainsi rédigé:

"L'absence, l'irrégularité ou la perte de ce "titre, ne préjudicie ni à l'existence, ni à la validité "du contrat de transport".

On conçoit que la perte de la lettre de transport aérien ne préjudicie pas à l'existence du contrat de transport car il en est de même pour la perte d'une lettre de change. Mais, en ce qui concerne l'absence ou l'irrégularité de la lettre de transport, M. COGLIOLO doute, pour une raison de forme et pour une raison de fond, de l'utilité de l'article qui déclare que cela ne préjudicie pas à l'existence ou à le validité du contrat. La raison de forme est que c'est diminuer singulièrement la valeur de la lettre de transport aèrien que de dire, dans un article qui règle toute la question, que son absence ne préjudicie ni à l'existence, ni à la validité du contrat de transport. La raison de fond est qu'il est nécessaire de résoudre la question, très fréquente en droit maritime en ce qui concerne le connaissement. M. COGLIOLO se demande s'il ne serait pas préférable de dire que le transporteur a le droit de demander à l'expéditeur l'établissement de la lettre de transport aérien et que l'expéditeur a le droit de le demander également, mais que, pour les transports internationaux, une lettre de transport aérien est obligatoire.

M. DE VOS, Rapporteur, expose que l'observation de M. COGLIOLO est précisément un des points qui ent soulevé le plus de difficultés lors de l'examen par la Commission. Il a para impossible à certaines délègations, et notamment à la Délégation Britannique, d'introduire l'obligation de la lettre de transport aérien pour tous les transports. Cette Délégation estime très difficile de faire accepter par la législation britannique l'établissement d'une sanction pénale adéquate correspondant à cette obligation. Les experts britanniques ont fait observer qu'en n'imposant pas le principe de l'obligation le résultat pratique serait néanmoins le même. Pour eux, il serait possible d'arriver au même résultat de la manière suivante:

1°—les transporteurs doivent être poussés à se servir d'une lettre de transport aérien chaque fois qu'ils font un contrat de transport aérien international sans toutefois qu'il soit rendu illégal de s'en dispenser.

2°—si le transporteur se sert d'une lettre de transport, ce document doit (sans qu'il soit toutefois illégal de les omettre) contenir certaines mentions essentielles (mentions numérotées de a) à g) à l'article 7 du projet de convention).

3°—la méthode à adopter pour atteindre ces deux buts devrait être de rendre matériellement avantageux aux transporteurs de faire usage d'une lettre de transport aérien contenant les mentions essentielles et de les mettre dans une situation moins favorable s'ils préférent conclure un contrat de transport sans lettre de transport ou sans les mentions essentielles.

[page 25] En conséquence, la Délégation Britannique a proposé à la Commission:

a) que la convention stipule que si un contrat de transport est conclu, sans l'établissement d'une lettre de transport aérien contenant les mentions essentielles, le transporteur perdra les avantages que lui sent conférés par les articles 5, 6 et 7 de l'avant-projet de Convention sur la responsabilité (sans toutefois porter atteinte aux autres dispositions dudit avant-projet) et qu'un tel contrat, en ce que concerne les matières aux-quelles ont trait los articles précités, est régi par le droit commun.

La sanction sera de cette façon non seulement automatique, uniforme et universelle, mais elle se trouvera dans le cadre même de la Convention.

b) qu'il soit annexé à la Convention un modèle de lettre de transport dont l'usage serait recommandé.

Il a paru à la Commission que cette conception, très différente évidemment des conceptions latines, pouvait être fort utile et qu'en acceptant ce minimum d'obligations, il était possible d'obtenir l'unanimité et de faire adopter la lettre de transport aérien.

D'autre part, si la mention, au second alinéa de l'article 3, du mot "absence" semble indiquer une contradiction et que, dès qu'il s'agit de régler l'existence de la lettre de transport aérien, on ne devrait pas parler de son absence, il n'y a là qu'une apparence. Le maintien du mot "absence" indique simplement que la lettre de transport n'est pas obligatoire et que le transport reste valable même sans ce document.

M. PITTARD (Suisse) ajoute que si le mot "absence" n'était pas maintenu, le transporteur ne ferait pas de lettre de transport pour échapper à la convention; tandis qu'avec le maintien du mot "absence" le transporteur reste soumis à la Convention et l'on vise ainsi le transport privé d'un individu faisant exceptionnellement un transport contre rémunération.

M. RIPERT (France) rappelle qu'il a été prévu, par la Deuxième Commission, à l'article 16 de l'avant-projet de convention, une sanction très énergique contre celui qui ne fera pas de lettre de transport: cette sanction consiste en ce que les dispositions de la convention s'appliqueront à lui en tant qu'elle lui sont défavorables et qu'il ne pourra réclamer les exonérations contenues dans la Convention.

Le Président propose de réserver le paragraphe 2 de l'article 3 jusqu'à la discussion de l'article 16, dont il vient d'être parlé. Il en est ainsi dècidé.

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[page 27] Le Président passe à l'article 7, dont il donne lecture:

"La lettre de voiture contient les mentions suivantes:

"a) le lieu où le document a été crée et la date à laquelle il a été établi;

"b) les point de depart et de destination

"c) l'itinéraire à suivre, les point d'escale de transbordement:

"d) le [n]om et l'adresse de l'expéditeur;

"e) le [nom] et l'adresse du transporteur;

"f) le [nom] et l'adresse du destinataire, à moins que l'expéditeur ne se réserve le droit de la désignor ulterieurement;

"g) la nature de la marchandise

[page 28]

"h) le nombre, le mode d'emballago, les marques particulières ou les numéros des colis;

"i) le poids, la quantité, la contenance ou la dimension de la marchandise;

"k) le prix du transport, s'il est stipulé, la date et le lieu de paiement, et la personne qui doit payer;

"l) la désignation par l'expéditeur de la valeur de la merchandise de l'interēt de la livraison;

"m) le nombre d'exemplaires de la lettre de voiture;
"n) les documents transmis au transporteur pour accompagner la lettre de voiture.

"Les mentions indiqués sous les lettres a) à g) doivent ẽtre obligatoirement inscrites dans la lettre "de voiture."

M. DE VOS, Rapporteur, fait remarquer qu' à propos de la convention sur la responsabilité il a été décidé d'ajouter après le mot "itinéraire" le met "prévu", attendu qu'il n'appartient à personne d'indiquer un itinéraire fixe, l'itinéraire comprenant : le point de départ, les escales et le point de destination prévu. Il demande donc qu'il soit adjouté le mot "prévu".

Le Président interrege le Comité sur ce point. Aucune objection n'étant faite, il est décidé que le mot "prévu" sera ajouté.

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[page 30) Le Président donne lécture de l'article 8, ainsi conçu :

"La lettre de voiture doit contenir une clause "stipulant que le transport est soumis au régime de la "responsabilité établie par la Convention Internationale "du 6 Novembre 1925, ainsi que les dispositions principales "de celle-ci."

A la suite d'un échange de vues auquel prennent part M. RICHTER (Allemagne), M. COGLIOLO (Italie) et le Rapporteur, il est décidé que le texte de l'article 8 sera ainsi rédigé :

"La lettre de voiture doit centenir une clause stipulant que le transport est soumis au régime de la responsabilité établie par la Convention International du . . . . . ."

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[page 40] [Troisième Séance de CITEJA (6 Avril)]

Le Président soumet au Comité l'article 16, ainsi rédigé :

"Si une lettre de voiture contenant toutes les mentions indiquées par l'article 7, lettres a) à g), et par l'article 8 n'a

pas été délivrée pour un transport international, le transporteur n'en sera pas moins soumis aux règles de la Convention Internationale sur la responsabilité, mais le transporteur n'aura pas le droit de se prévaloir des dispositions de ladite Convention qui l'exenèrent de se responsabilité ou des fautes de sos préposés ou qui établissent une limitation de responsabilité."

M. YOUPIS (Grèce) estime que la sanction prévue par cet article et qui consiste à priver le transporteur de tous les avantages de la convention se comprend pour une Compagnie puisante, mais que pour un particulier faisant accidentellement un transport international de marchandises l'absence de limitation de la responsabilité serait, à son avis, une sanction trop sévère.

M. PITTARD (Suisse) ne partage pas set avis. La limitation de la responabilité a été cevisagée pour amener à la conclusion d'une assurance, si un transporteur accidentel de marchandises vont s'assurer, il n'a qu'a limiter sa responsabilité au moyen d'une lettre de transport. Il y a là une barrière très utile obligeant les transporteurs à rentrer dans le cadre de la covention.

M. PINEDA DE MONT (Guatémala) appuie cette manière de voir.

Le Comité consulté par le Président, décide d'adopter le text de l'article 16 qu'il a été présenté.

Le Président signale au Comité qu'il y a lieu de reprendre le paragraphe 2 de l'article 3 qui avait été réservé:

"L'absence, l'irrégularité ou la perte de ce titre, ne préjudicie ni à l'existence, ni à la validité du contrat de transport."

Le Président rappelle que le Comité est en préscence de deux propositions:

[page 41]-l'une formulée par M. COGLIOLO, consistant dans la suppression pure et simple du deuxième paragraphe de l'article 3.

—l'autre, formulée par le Rapporteur, maintenant l'article 3 tel qu'il est présenté, le Sous-Comité de Rédaction devant trouver une rédaction nouvelle atténuée en ce qui concerne le mot "absence".

M. DE LAPRADELLE (France) estime que le texte tel qu'il est rédigé, sans modification, se comprend parfaitement : l'absence, l'irrégularité ou le perte du titre n'atténue pas l'existence du contrat de transport.

M. AMBROSINI (Italie) propose de supprimer ce deuxième paragraphe et de le mettre dans l'exposé des motifs.

M. DE VOS, Rapporteur, fait remarquer que ce texte n'est pas une simple explication mais s'impose pour la traduction en certaines langues, notamment en anglais. Si le premier alinén est seul traduit, on ne sait pas s'il constitue ou non une obligation. La deuxième phrase est nécessaire pour voir que ce n'est pas une obligation.

Le Comité, consulté par le président, repousse la suppression du paragraphe 2 de l'article 3 et veto l'article 3 tel qu'il a été présenté.

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ANNEXE "A"

RAPPORT

DE LA DEUXIEME COMMISSION DU COMITE INTERNATIONAL TECHNIQUE D'EXPERTS JURIDIQUES AERIENS SUR LA LETTRE DE VOITURE AERIENNE

[30 Mars 1927]

* * * * *

[Annexe page 2] La Convention n'impose pas l'obligation d'une lettre de voiture; mais dès qu'une lettre de voiture existe, les dispositions de la Convention s'y appliquent.

Cette formule a été admise par la Commission en vue d'aboutir à une adoption unanime des règles de la Convention, bien que certains membres aient été d'avis que le transport devrait être constaté obligatoirement par une lettre de voiture. Le système adopté constitue un minimum, rencontrant l'opinion émise notamment par les Délégations allemande et britannique qui ont estimé qu'en cette matière il convient de laisser les parties libres de sauvegarder leurs intérêts.

Le délégué de la Grande-Bretagne a fait ressortir en outre la difficulté qui existe dans certains pays de sanctionner efficacement cette obligation.

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[Annexe page 3] 4°—En ce qui concerne les mentions à insérer dans la lettre de voiture, la Commission a adopté le système suivant :

Il existe dans certains pays des difficultés pour édicter des sanctions efficaces en vue d'assurer l'exécution de certaines dispositions de la Convention. Il ne sert de rien de rendre ces dispositions obligatoires si une sanction adéquate n'y correspond. Ces dispositions peuvent, du reste, être très utiles.

Parmi les mentions à insérer dans la lettre de voiture, il y a celles qui indiquent qu'il s'agit d'un document couvrant un transport international, celles prévues sous les lettres a)—f); elles sont [Annexe page 4] indispensables au point de vue de l'exécution de la Convention.

Il en est de ême de la mention sous la lettre g) : la nature de la marchandise, parce que des prohibitions peuvent être édictées par certains pays quant à l'entrée ou à la sortie de marchandises.

Les autres mentions de h) à n) présentent une utilité incontestable, mais leur omission ne peut être, suivant certaines conceptions nationales, utilement sanctionnée. Il est

hautement recommandable que la lettre de voiture porte ces mentions, mais leur insertion dépendra surtout de l'intérêt même qu'ont les parties de les indiquer dans le document formant titre.

Ces mentions, du reste, ne sont pas limitatives. Il peut être utile, par example, dans certains cas, de donner l'indication de l'appareil qui transporte la marchandise.

* * * * *

[Annexe page 7] 10°—Quant aux sanctions, la difficulté pour certaines conceptions nationales de prévoir des [Annexe page 8] mesures adéquates en vue d'assurer l'observaton de certaines dispositions de la Convention a déjà été signalée. La Commission à cet égard s'est ralliée à l'opinion émise par la Délégation britannique qu'on ne peut imposer une règlementation en cette matière par le moyen de sanctions pénales. Elle a admis un système qui apparait comme éminemment pratique et qui consiste à sanctionner l'obligation découlant des articles 7 et 8 par la perte éventuelle des avantages qui sont conférés aux parties par certains articles du projet de convention sur la responsabilité du transporteur.

Les parties ont donc tout intérêt à faire usage d'une lettre de voiture contenant les mentions essentielles.

* * * * *

AVANT-PROJET [*]
DE CONVENTION SUR LA LETTRE DE VOITURE AERIENNE

* * * * *

ARTICLE 3—Le transport international d'une marchandise est constaté par un titre, appelé : lettre de voiture aérienne.

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* Attached to preceding report of CITEJA Second Commission.

L'absence, l'irrégularité ou la perte de ce titre, ne préjudicie ni à l'existence, ni à la validité [page 2] du contrat de transport.

* * * * *

[page 3] ARTICLE 7—La lettre de voiture contient les mentions suivantes :

a) le lieu où le document a été créé et la date à laquelle il a été établi;
b) les points de départ et de destination;
c) l'itinéraire à suivre, les points d'escale de transbordement;
d) le nom et l'adresse de l'expéditeur;
e) le nom et l'adresse du transporteur;
f) le nom et l'adresse du destinataire, à moins que l'expéditeur ne se réserve le droit de le désigner ultérieurement;
g) la nature de la marchandise;
h) le nombre, le mode d'emballage, les marques particulières ou les numéros des colis;
i) le poids, la quantite, la contenance ou la dimension de la marchandise;
k) le prix du transport, s'il est stipulé, la date et le lieu de paiement, et la personne qui doit payer;
l) la désignation par l'expéditeur de la valeur de la marchandise, de l'intérêt de la livraison;
m) le nombre d'exemplaires de la lettre de voiture;
n) les documents transmis au transporteur pour accompagner la lettre de voiture.

Les mentions indiquées sous les lettres a) à g), doivent être obligatoirement inscrites dans la lettre de voiture.

[page 4] ARTICLE 8—Le lettre de voiture doit contenir une clause stipulant que le transport est soumis au régime de la responsabilité établie par la Convention Interna-

tionale du 6 Novembre 1925, ainsi que les dispositions principales de celle-ci.

* * * * *

[page 7] ARTICLE 16—Si une lettre de voiture contenant toutes les mentions indiquées par l'article 7, lettres a) à g), et par l'article 8 n'a pas été délivrée pour un transport international, le transporteur n'en sera pas moins soumis aux règles de la Convention Internationale sur la responsabilité, mais le transporteur n'aura pas le droit de se prévaloir des dispositions de ladite Convention qui l'exonèrent de sa responsabilité on des fautes de ses préposés ou qui établissent une limitation de responsabilité.

* * * * *

Annexe "B"

RAPPORT

DE LA DEUXIEME COMMISSION DU COMITE INTERNATIONAL TECHNIQUE D'EXPERTS JURIDIQUES AERIENS SUR LES OBSERVATIONS & PROPOSITIONS DE MODIFICATIONS RELATIVES A L'AVANT-PROJET DE CONVENTION SUR LA RESPONSABILITE DU TRANSPORTEUR AERIEN.

* * * * *

[Annexe page 5] *Article 8.*

A l'occasion de est article, la Commission a été d'accord pour reconnaitre la nécessité d'indiquer par une dispositon spéciale que les règles de la Convention concernant la limitation ne peuvent pas s'appliquer si la victime ou ses ayante-droit preuvent qu'il y a eu un acte illicite intentionnel du transporteur.

Dans le même ordre d'idéas: non applicabilité de la convention sur la limitation, il a été signalé qu'il y avait lieu de prévoir un texte contenant la sanction civile admise en cas d'infraction aux articles 7 et 8 de la convention sur la lettre de transport aŕien.

Au même article, il a été décidé de remplacer l'expression "d'aprés la législation nationale du défunt" par celle de "le statut personnel du défunt" qui est plus exacte.

* * * * *

Annexe C

Resolutions (No. 5 à 15) prises par le Comité dans sa Deuxième Session

* * * * *

[page 7] **RESOLUTION NO. 12**

Le Comité décide d'approuver le texte ciaprès d'avant-projet de Convention sur la lettre de transport aérien, proposé par le Sous-Comité de Rédaction:

AVANT-PROJET DE CONVENTION SUR LA LETTRE DE TRANSPORT AERIEN

* * * * *

Article 4.

[page 8] Tout transporteur a le droit de demander à l'expéditeur l'établissement et la remise d'un titre appelé; lettre de transport aérien; tout expéditeur a le droit de demander au transporteur l'acceptation de ce document.

Tontefois, et sous réserve des dispositions de l'article 15, l'absence, l'irrégularité ou la perte de ce titre, ne préjudicie ni à l'existence, ni à la validité du contrat de transport.

Le transmission de la lettre de transport aérien ne suffit pas; à elle seule, à donner le droit de disposer de la marchandise.

* * * * *

RESOLUTION NO. 13

Le Comité décide que le projet de texte de Convention sur la lettre de transport aérien tel qu'il est sorti des déliberations du C.I.T.E.J.A. ainsi que les modifications proposées à la Convention sur la Responsabilite du Transporteur Aérien, telles qu'elles ont été examinées par la Deuxiéme Commission, sont renvoyés à ladite Commission, en vue d'envisager la possibilité de rédiger une convention unique, étant entendu qu'il sera demandé au préalable aux Délégations leur avis sur toute modification à apporter à la convention sur la responsabilité, ainsi qui sur l'opportunité de fusionner les deux Conventions.

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ENGLISH TRANSLATION OF EXCERPTS FROM COMPLETE PROCEEDINGS OF CITEJA'S SECOND SESSION

APRIL 1927

* * * * *

Mr. Cogliolo (Italy) offered a critique of Article 3(2), which reads as follows:

"The absence, irregularity, or loss of the transportation document shall not prejudice the existence or the validity of the contract of transportation."

It can be understood that the loss of the air waybill is not prejudicial to the existence of a contract of transportation, since the same applies to the loss of a bill of exchange. But with regard to the absence or irregularity of the air waybill, Mr. Cogliolo, based on a reason of form as well as on one of substance, questioned the usefulness of the article, which states that this is not prejudicial to the existence or the validity of the contract. The reason of form was that in an article that deals with the entire issue, saying that the absence of the air waybill is not prejudicial to the existence or the validity of the contract of transportation particularly diminishes the value of that air waybill. The reason of substance was the need to resolve the question, very frequent in maritime law in terms of bills of lading. Mr. Cogliolo wondered whether it would not be preferable to say that the carrier was entitled to ask the consignor to make out an air waybill and that the consignor was entitled to ask for one also, but that for international transportation an air waybill was compulsory.

Mr. de Vos, Rapporteur, stated that Mr. Cogliolo's observation was precisely one of the points that raised the most difficulties in the course of the review by the Commission. It seemed impossible to some delegations, in particular the British delegation to introduce the obligation of the air waybill for all transportation. The British delega-

tion considered that it would be very difficult to get British law to accept the establishment of an appropriate penalty connected with this obligation. British experts noted that without imposing the principle of obligation, the practical result would still be the same. In their opinion, it would be possible to arrive at the same result in the following way:

1. The carriers must be urged to use an air waybill whenever they draw up an international contract of transportation, without it being made illegal for failure to do so.

2. If the carrier uses a waybill, this document must contain certain essential particulars (without it being illegal to omit them however), which are lettered (a) through (g) in Article 7 of the draft convention.

3. The method to be adopted in order to reach these two goals should be to make it materially worthwhile for the carriers to use an air waybill containing essential particulars and to put them in a less favorable situation if they prefer to draw up a contract of transportation without a waybill or the essential particulars.

Consequently, the British delegation proposed the following to the Commission:

(a) that the convention stipulate that if a contract of transportation is concluded, without an air waybill containing the essential particulars being made out, the carrier loses the advantages conferred on him by Articles 5, 6, and 7 of the draft Convention on liability (without affecting the other provisions of the draft, however) and that such a contract, with regard to the matters with which the above-mentioned articles are concerned, is governed by ordinary law.

The penalty would thus be not only automatic, uniform, and universal, it would also be found within the very context of the convention.

(b) that a model of a waybill, the use of which would be recommended, be included as an annex to the convention.

It seemed to the Commission that this conception, very different obviously from the Latin conceptions, could be very useful and that by accepting this minimum level obligations, it was possible to obtain unanimity and to have the air waybill adopted.

Furthermore, although mention of the word "absence" in Article 3(2) seems to indicate a contradiction and although it seems that when regulating the existence of the air waybill, its absence should not be discussed, this is only the way it seems. Retaining the word "absence" indicates simply that the waybill is not compulsory and that the transportation remains valid even without that document.

Mr. Pittard (Switzerland) added that if the word "absence" was not retained, the carrier would not draw up a waybill in order to evade the convention; but if the word "absence" was retained, the carrier would remain subject to the convention and the private transportation by an individual who under exceptional circumstances carried goods for payment would thus also be covered.

Mr. Ripert (France) noted that the Second Commission had established in Article 16 of the draft convention a very harsh penalty against anyone not seeking out a waybill: under this penalty, the provisions of the convention unfavorable to him would apply and he would not be able to claim the exemptions contained in the convention.

The Chairman proposed to reserve Article 3(2) until Article 16, which had just been mentioned, was discussed. It was so decided.

* * * * *

The President went on to Article 7, which he read:

The air waybill shall contain the following particulars:

(a) The place and date of its execution;

(b) The place of departure and of destination;

(c) The itinerary to be followed, the stopover points for transshipment;

(d) The name and address of the consignor;

(e) The name and address of the carrier;

(f) The name and address of the consignee, unless the consignor reserves the right to indicate the former at a later time;

(g) The nature of the goods;

(h) The number of packages, the method of packing, and the particular marks or numbers upon them;

(i) The weight, quantity, capacity, or dimensions of the goods;

(k) [sic] The freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(l) The indication by the consignor of the value of the merchandise, the value of the delivery;

(m) The number of parts of the air waybill;

(n) The documents handed to the carrier to accompany the air waybill;

The particulars indicated under letters (a) through (g) must be contained in the air waybill.

Mr. de Vos, Rapporteur, noted that with regard to the convention on liability, it had been decided to add the word "agreed" after [in English before] the word "itinerary," considering that it was no one's responsibility to indicate a fixed itinerary, the itinerary including: the place of departure, the stopovers, and the planned place of destination. He asked therefore that the word "agreed" be added.

The President asked the Committee about this point. No objection having been made, it was decided that the word "agreed" would be added.

* * * * *

The President read Article 8 as follows:

> "The air waybill shall contain a clause specifying that the transportation is subject to the liability rules set forth in the International Convention on November 6, 1925, as well as the principal provision thereof."

After an exchange of views in which Mr. Richter (Germany), Mr. Cogliolo (Italy), and the Rapporteur took part, it was decided that the text of Article 8 would read as follows:

> "The air waybill shall contain a clause specifying that the transportation is subject to the liability rules set forth in the International Convention of. . ."

* * * * *

[page 40] [Third meeting of CITEJA (April 6)]

The President submitted Article 16 to the Committee, as follows:

> "If an air waybill containing all the particulars indicated in Article 7(a) through (g) and Article 8 has not been issued for an international transportation, the carrier shall be no less subject to the rules of the International Convention on Liability, but he shall not be entitled to avail himself of the provisions of said Convention that would exclude his liability or the errors of his employees or that set a limit to the liability."

Mr. Youpis (Greece) thought that the penalty provided in this article, which involved depriving the carrier of all the advantages of the convention, was understandable in the case of a powerful company but that for a private individual performing international transportation of goods on an exceptional basis the absence of a limitation on the liability would, in his opinion, be too severe a penalty.

Mr. Pittard (Switzerland) did not share this view. The limitation of liability had been designed to serve as insurance; if an occasional carrier of goods wanted to insure himself, he had only to limit his liability through a waybill. That was a very useful barrier forcing the carriers to operate within the framework of the convention.

Mr. Piñeda de Mont (Guatemala) supported this point of view.

The Committee, consulted by the Chairman, decided to adopt the text of Article 16 as presented.

The Chairman indicated to the Committee that it was necessary to take up Article 3(2) again, discussion of which had been reserved:

"The absence, irregularity, or loss of the transportation document shall not be detrimental to the existence or the validity of the contract of transportation."

The Chairman reminded the Committee that it was faced with two proposals:

—the one formulated by Mr. Cogliolo involved the elimination pure and simple of Article 3(2);

—the other, formulated by the Rapporteur, involved retaining Article 3 as it appears, with new, attenuated wording with regard to the word "absence" to be found by the Drafting Sub-Committee.

Mr. de Lapradelle (France) thought that the text as drafted, without changes, was perfectly understandable: the absence, irregularity, or loss of the transportation document did not mitigate the existence of the contract of transportation.

Mr. Ambrosini (Italy) proposed eliminating the second paragraph and including it in the explanatory statement.

Mr. de Vos, Rapporteur, noted that this text was not simply an explanation but was essential for the translation into certain languages, particularly English. If the first paragraph alone was translated, it would not be known

whether it constituted an obligation or not. The second sentence was necessary to show that it was not an obligation.

The Committee, consulted by the President, rejected the elimination of Article 3(2) and voted to retain Article 3 as presented.

* * * * *

Annex "A"

REPORT OF THE SECOND COMMISSION OF THE INTERNATIONAL TECHNICAL COMMITTEE OF AERIAL LEGAL EXPERTS ON THE AIR WAYBILL

[March 30, 1927]

* * * * *

The Convention does not establish an air waybill as compulsory, but once an air waybill exists, the provisions of the Convention apply thereto.

This approach was accepted by the Commission with a view to achieving the unanimous adoption of the Convention rules, despite the fact that some members were of the opinion that transportation of goods should be always be certified by an air waybill. The system adopted sets a minimum, in keeping with the opinion issued by the German and British delegations, which considered that with regard to this matter, the parties should be left free to safeguard their interests.

* * * * *

4. With regard to the particulars to be contained in the air waybill, the Commission adopted the following system:

Some countries face difficulties in enacting effecting penalties in order to enforce certain provisions of the Convention. It accomplishes nothing to make these provisions compulsory if an adequate penalty cannot be imposed to enforce them. These provisions can, moreover, prove extremely useful.

Among the particulars to be contained in the air waybill are those indicating that it is a document pertaining to *international* transportation, that is, items (a) through (f); they are essential from the standpoint of the enforcement of the Convention.

Also essential is item (g)—the nature of the goods—inasmuch as prohibitions on the entry or exit of goods may be decreed by some countries.

The other particulars, (h) through (n), are indisputably useful, yet their omission cannot, in the view of certain nations, be effectively penalized. It is highly recommended that the air waybill include these particulars, but their inclusion shall depend, above all, on the interest of the parties in including them in this document.

Furthermore, these particulars are non-restrictive. It may be useful, for example, in certain cases, to specify the aircraft transporting the goods.

* * * * *

[Annex page 7] 10. With respect to penalties, the difficulties faced by certain nations in instituting adequate measures to ensure the enforcement of certain provisions of the Convention has already been mentioned. In this regard, the Commission concurred with the opinion issued by the British delegation which asserted that this matter cannot be regulated by means of penalties. The Commission agreed to a system which seems extremely practical and which consists in enforcing the obligations deriving from Articles 7 and 8 by means of possible loss of the

benefits granted to the parties by certain articles, in the Draft Convention, on the liability of the carrier.

It is therefore in the best interests of the parties to use an air waybill containing the essential particulars.

* * * * *

PRELIMINARY DRAFT OF CONVENTION ON THE AIR WAYBILL

* * * * *

Article 3. The international transportation of goods shall be certified by a document called an "air waybill."

The absence, irregularity, or loss of this document shall not prejudice the existence or validity of the contract of transportation.

* * * * *

Article 7. The air waybill shall contain the following particulars:

(a) The place and date of its execution;

(b) The place of departure and of destination;

(c) The itinerary to be followed and the stopping places for unloading;

(d) The name and address of the consignor;

(e) The name and address of the carrier;

(f) The name and address of the consignee, unless the consignor reserves the right to indicate this at a later time;

(g) The nature of the goods;

(h) The number of packages, the method of packing, and the particular marks or numbers on them;

(i) The weight, the quantity, and the volume or dimensions of the goods;

[No (j)]

(k) The freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(l) The indication by the consignor of the value of the goods and the significance of the delivery;

(m) The number of parts of the air waybill;

(n) The documents transmitted to the carrier together with the air waybill.

The indication in the air waybill of the particulars set out in (a) through (g) is compulsory.

Article 8. The air waybill shall contain a statement that the transportation is subject to the rules relating to liability established in the International Convention of November 6, 1925, as well as to the main provisions thereof.

* * * * *

Article 16. If an air waybill containing all the particulars set out in Article 7(a) through (g) and by Article 8 has not been made out for international transportation, the carrier shall still be subject to the rules of the International Convention on liability, but the carrier shall not be entitled to avail himself of those provisions of this Convention that exclude his own liability, release him from responsibility for the errors of his agents, or limit his liability.

* * * * *

Annex "B"

REPORT OF THE SECOND COMMISSION OF THE INTERNATIONAL TECHNICAL COMMITTEE OF AERIAL LEGAL EXPERTS ON THE OBSERVATIONS AND PROPOSED MODIFICATIONS CONCERNING THE DRAFT CONVENTION ON THE LIABILITY OF THE AIR CARRIER

* * * * *

Article 8

Concerning this article, the Commission was in agreement on recognizing the need to indicate by a special pro-

vision that the rules of the convention concerning limitation cannot be applied if the victim or his beneficiaries prove that the carrier intentionally committed an illicit act.

Along the same lines: inapplicability of the convention on limitation; it was pointed out that there was reason to provide a text containing the civil penalty allowed in case of violation of Articles 7 and 8 of the convention on the air waybill.

For the same article, it was decided to replace the expression "according to the national laws of the deceased" by "the personal status of the deceased," which is more precise.

* * * * *

RESOLUTION NO. 12

The Committee decided to approve the following text of the draft convention on the air waybill, proposed by the Drafting Subcommittee:

PRELIMINARY DRAFT CONVENTION ON THE WAYBILL

* * * * *

Article 4

Every carrier has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

Nonetheless, and subject to the provisions of Article 15, the absence, irregularity, or loss of this document shall not prejudice the existence or the validity of the contract of transportation.

The transmission of the air waybill shall not, in itself, confer the right to dispose of the goods.

* * * * *

RESOLUTION NO. 13

The Committee has decided that the draft text of the convention on the air waybill, as it emerged from the deliberations of the International Technical Committee of Aerial Legal Experts, together with the proposed modifications to the convention on the liability of the air carrier, as they were examined by the Second Commission, shall be sent to that Commission with a view to considering the possibility of drafting a single convention, with the understanding that the opinion of the delegations will first be sought concerning any modification to be made to the convention on liability and the appropriateness of combining the two conventions.

APPENDIX E

COMITÉ INTERNATIONAL TECHNIQUE D'EXPERTS JURIDIQUE AÉRIENS

COMPTE-RENDU DE LA 3ème SESSION

MAI 1928

* * * * *

[Compte rendu de la deuxiéme séance de (CITEJA (24 Mai)]

[page 23] CHAPITRE II

Titres de transport. – Section I. – Billet de passage

ARTICLE 3.

Paragraphe premier.

«Dans le transport de voyageurs, le transporteur est tenu de délivrer un billet de passage qui doit contenir les mentions suivantes:

a) le lieu et la date de l'émission,

b) les points de départ et de destination,

c) l'indication sommaire de la voie á suivre (*via*), ainsi que les points d'arrêts prévus,

d) le nom et l'adresse du ou des transporteurs.

Le Rapporteur rappelle que l'I.A.T.A. a formulé certaines observations au sujet de cet article 3:

La premiére observation demande la suppression sur billet de passage des points d'arrêts prévus.

Le Rapporteur donne lecture des arguments donnés à ce sujet par l'I.A.T.A.:

«Il ne convient pas que le billet de passage contienne aussi les points d'arrêts prévus. Il y a aujourd'hui déjà des communications aériennes journaliéres entre deux endroits avec arrêts prévus et sans arrêts prévus. Nous renvoyons à ce sujet à la ligne aérienne réguliére de la

Deutsche Luft Hansa, entre Berlin et Zurich, qui se pratique chaque jour en partie avec arrêts à Halle, Leipzig, Erfurt et Stuttgart, en partie sans arrêt. Le trafic aérien doit tâcher d'organiser d'une facon égale, alternativement, des communications directes et des communications avec arrêts. Quoique le billet de passage indique régulièrement une heure fixe, il arrive cependant fréquemment qu'il y soit apporté des changements. Etant donné que plusieurs stations sont très surchargées, l ne peut être garanti, qu'en cas de pareils changements, les arrêts tels qu'ils sont indiqués sur le plan soient ajoutés ou biffés.

«D'aprés les termes de l'article premier, il importe seulement de marquer sur le billet de passage, les points d'arrêts indiqués sur le plan qui sont situés dans un pays, dans lequel ne se trouvent pas en même temps le point de départ [page 24] et le point d'arrivée. Par conséquent, si maintenant des arrêts prévus doivent être mentionnés dans le billet de passage, cela ne peut concerner que les derniers ponts d'arrêts.

«En faisant cette proposition, nous voudrions qu'on considère que les sociétés de trafic aérien ne disposent pas dans les stations respectives d'un personnel aussi nombreux que, par exemple, les chemins de fer et les compagnies de navigation. C'est pourquoi, il est nécessaire que le personnel soit déchargé de tout travail d'écriture qui n'est pas absolument indispensable. Cela importe principalement, si de la délivrance défectueuse d'un billet de passage, il peut résulter pour la société de trafic aérien quelque préjudice.»

L'I.A.T.A. a formulé une seconde proposition : l'addition du numéro du bulletin de bagage sur le billet de passage.

La première de ces propositions : suppression de la lettre *c*) a déjà été étudiée antérieurement par les Experts qui l'ont discutée et rejetée, le Rapporteur ne la retient donc

pas. La seconde proposition résulte de la pratique et paraît intéressante : l'article 4 prévoyant le numéro du billet de passage, il serait possible de prévoir que le numéro du bulletin de bagage serait porté sur le billet de passage. Toutefois, au point de vue de la convention, cette proposition ne présente pas d'intérêt juridique, elle ne présente d'utlité que pour le transporteur, aussi mettra-t-il cette mention sur le billet que cela soit dit dans la Convention ou non.

Le Président demande au Comité s'il entend retenir cette suggestion qui ne semble pas avoir sa place dans le texte de la Convention.

Aucune autre observation n'étant faite sur le paragraphe premier, et la suggestion de l'I.A.T.A. n'étant pas retenue, le paragraphe premier de l'article 3 mis aux voix est adopté.

Paragraphe 2

«Le billet de passage doit contenir, en outre, une clause stipulant que le transport est soumis au régime de la responsabilité établi par la présente Convention.»

M. PITTARD rappelle qu'il a été entendu que des modèles des billets seraient annexés à la Convention ainsi qu'il en a été fait pour la Convention de Berne relative aux chemins de fer. Ces modèles doivent comporter le minimum d'indications, les Compagnies étant libres d'ajouter toutes celles qui leur paraissent utiles.

Le Rapporteur indique que la chose est formellement prévue à l'article 19.

Le paragraphe 2 est alors mis aux voix et adopté.

Paragraphe 3

«L'absence, l'irrégularité ou la perte de ce titre de transport ne préjudicie ni à l'existence ni à la validité du contrat de transport.»

Aucune observation n'étant présentée, le paragraphe 3 est adopté.

Paragraphe 4

«Si, pour un transport international, le transporteur accepte le voyageur sans qu'il ait été établi un billet de passage contenant les mentions indiquées ci-dessus, le contrat de transport n'en sera pas moins soumis aux règles de la [page 25] présente Convention, mais le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent en tout ou en partie sa responsabilité directe ou dérivée des fautes de ses préposés.»

M. YOUPIS croit devoir signaler que la sanction prévue dans ce paragraphe est trop sévére lorsqu'il s'agit d'une simple omission. Il est dit, en effet, «sans qu'il ait été établi un billet de passage contenant les mentions indiquées cidessus. . . » L'absence de l'indication du lieu d'émission ou de la date par exemple, retirera au tansporteur le droit de se prévaloir des dispositions qui l'exonèrent de la responsabilité. Il demande que l'on ajoute, à la fin de l'alinéa 4, la phrase suivante : «Si ce billet de passage ne contient pas l'une des mentions indiquées ci-dessus, le transporteur n'aura ce droit que dans la mesure où aucun dommage n'aura été causé aux voyageurs».

M. PITTARD estime que la Convention doit se défendre elle-même. Cette question a été étudiée à fond. S'il y a omission d'une des mentions exigées il y a faute professionnelle et il est nécessaire qu'elle entraîne une sanction.

La Rapporteur ajoute, qu'ainsi que vient de l'indiquer M. PITTARD, de longues discussions antérieures ont abouti au texte actuellement proposé ; la seule sanction pratique qui a été trouvée est celle qui dérive de la Convention même. Ces ommission que M. YOUPIS considére comme légères ne le sont pas en fait : Tout ce qui est indiqué comme mentions obligatoires ayant une grande importance. Il rappelle que M. le Professeur COGLIOLO a dit, antérieurement à ce sujet :

«Un service de transport publics doit toujours avoir ses papiers en règle et on doit être plus sévère pour lui que pour un simple oubli d'un voyageur.»

M. YOUPIS persiste à trouver que le texte actuel est trop sévère et qu'il pourrait être atténué dans le sens indiqué par lui lorsque personne n'a été lésé.

La Rapporteur maintient le texte de la Commission Il rappelle que cette disposition, qui a été souvent attaquée au cours des discussions précédentes a toujours été maintenue pour la raison suivante : il s'agit là de la disposition essentielle de la Convention Ce texte représente, en effet, une transaction entre les diverses opinions des Délégations des Gouvernements au C.I.T.E.J.A. : certains délégués demandaient que le titre fut obligatoire, d'autres réclamaient une sanction civile, d'autres encore, une sanction pénale. Le texte finalement adopté est d'inspiration britannique. il consititute une transaction acceptée par tous les membres de la Commission. Si ce texte tombe, il est à craindre que ce soit toute la Convention qu'il faille remettre en discussion.

M. Youpis maintient son amendement auquel il donne la forme définitive suivante : «Si le billet de passage ne contient pas l'une quelconque des mentions indiquées cidessus, le transporteur n'aura ce droit que si et dans la mesure où un dommage est causé de ce fait au voyageur.»

L'amendement, mis aux voix, n'est pas adopté.

Le Président met aux voix le paragraphe 4, tel qu'il est rédigé. Le paragraphe 4 est adopté.

L'article 3, dans son ensemble, est alors adopté.

[page 26] **Section II. – Bulletin de Bagages**

ARTICLE 4

Paragraphe premier

«Dans le transport de bageges, autres que les menus objets personnels dont le voyageur conserve la garde, le transporteur est tenu de délivrer un bulletin de bagages.»

Aucune observation n'étant présentée, le paragraphe Ier est mis aux voix et adopté.

Paragraphe 2

«Le transporteur est déchargé de sa responsabilité par la livraison des bagages au porteur du bulletin.»

M. RIPERT remarque que ce texte semblerait vouloir dire qu'il n'y a aucune réclamation possible après la délivrance des bagages. Il croit que l'on a voulu dire, simplement, que le transporteur est libéré quand il a remis les bagages au porteur du bulletin et que la question de responsabilité pour les bagages proprement dits n'a pas été réglée doit l'être comme pour les marchandises.

Le Président estime qu'en il s'agit, en la circonstance, de la personne qui peut être qualifiée pour prendre livraison des bagages. Il propose alors de rédiger le texte de la manière suivante : « La livraison des bagages au voyageur se fait valablement au porteur de bulletin.»

Cette rédaction, mise aux voix, est adoptée.

Paragraphe 3

«Le bulletin de bagages est établi en deux exemphaires.»

M. WOLTERBEEK MULLER (Pays-Bas) estime qu'il est inutile de dire dans la Convention qu'il y aura deux exemplaires du bulletin de bagage. Le transporteur le fera s'il veut, mais il doit y avoir un seul exemplaire prévu : l'exemplaire pour le voyageur.

M. RIPERT répond qu'on pourrait faire le même raisonnement pour la lettre de transport aérien : le titre du transporteur accompagne les marchandises ou les bagages, il n'est donc pas inutile qu'il y ait un exemplaire qui lui reste.

M. RICHTER ajoute que si le voyageur perd son billet de bagages, il peut demander la production de l'autre exemplaire et faire la preuve avec ce second exemplaire.

Sous le bénéfice de ces explications, le Président met aux voix le paragraphe 3, qui est adopté.

Paragraphe 4

* * * * *

Il doit contenir les mentions suivantes :

«*a*) le lieu et la date d'émission.

«*b*) les points de depárt et de destination;

[page 27] «*c*) l'indication sommaire de la voie à suivre (via) ainsi que les points d'arrêts prévus,

«*d*) le nom et l'adresse du ou des transporteurs.

«*e*) le numéro du billet de passage,

«*f*) l'indication que le bulletin est établi en deux exemplaires.»

M. PITTARD faït remarquer que si, tout à l'heure, on a demandé de mettre le numéro du bulletin de bagages sur le billet de passage, la Commission demande, l'estimant

préférable, de mettre le numéro du billet de passage sur le bulletin de bagages.

Aucune observation n'étant présentée, le paragraphe 4 est adopté.

Paragraphe 5

«Le bulletin de bagages doit contenir une clause stipulant que le transporteur est déchargé de sa responsabilité par la livraison des bagages au porteur du bulletin.»

M. RIPERT remarque que la rédaction de ce paragraphe semble indiquer que le bulletin de bagages constitue un titre au porteur avec le droit, pour la compagnie de transports, de livrer les bagages au porteur du bulletin, sans que l'on ait rien prévu sur l'opposition possible du voyageur interdisant de livrer les bagages au porteur. Tout porteur d'un bulletin de bagages, quelle que soit la facon dont il s'est muni de ce bulletin peut prendre les bagages. Le Comité crée là un titre au porteur. Ce n'est pas ce que l'on a voulu dire.

M. RICHTER. – I'l s'agit là d'un titre au porteur au sens de droit. Le transporteur peut se libérer par la remise des bagages au porteur du bulletin, mais le porteur du bulletin de bagages ne peut pas exiger la livraison et le transporteur, s'il a des doutes, peut la refuser.

Le Président estime qu'il y a lieu de faire ressortir que le porteur du bulletin est envisagé comme le représentant, le mandataire du propriétaire des bagages. Il faut, en effet, répondre à la préoccupation de M. RIPERT et dire que ce bulletin n'est pas un titre au porteur.

M. PITTARD fait remarquer qu'il y a là *res inter alios acta* et qu'on peut l'empêcher. Néanmoins ce n'est pas un titre au porteur.

Après un bref échange de vues entre Sir Alfred DENNIS, M.M. WOLTERBEEK MULLER et YOUPIS, le Président constate que le Comité est d'accord sur le fond et qu'il s'agit simplement d'une question de rédaction. Il suggère la rédaction suivante : «La livraison au voyageur de ses bagages se fait valablement par leur remise au porteur du bulletin.»

Ce texte, accepté par le Rapporteur, est adopté par le Comité, étant entendu que le Sous-Comité de Rédaction pourra revoir la forme définitive à donner à cette clause.

Paragraphe 6

«Le bulletin de bagages doit contenir, en outre, une clause stipulant que le transport est soumis au régime de la responsabilité établi par la présente Convention.»

Aucune observation n'étant présentée, le paragraphe 6 est adopté.

[page 28] *Paragraphe 7*

«L'absence, l'irégularité ou la perte de ce bulletin de bagages ne préjudicie ni á l'existence, ni à la validité du contrat de transport.»

Aucune observation n'étant présentée, le paragraphe 7 est adopté.

Paragraphe 8

«Si, pour un transport international, le transporteur accepte les bagages sans qu'il ait été établi un bulletin contenant les mentions indiquées ci-dessus jusqu'à d) inclusivement, le transporteur n'en sera pas moins soumis aux règles de la présente Convention, mais le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent en tout ou en partie sa responsabilité directe ou dérivée des fautes de se préposés.»

Aucune observation n'étant présentée, le paragraphe 8 est adopté.

L'article 4 dans son ensemble est alors adopté.

Le Président annonce que la discussion reprendra le lendemain matin. 25 mai, à 11 heures.

La séance est levée á 19 heures.

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[page 39] [Troisième séance de CITEJA (25 mai)]

ARTICLE 18

«Si, pour un transport international, le transporteur accepte des marchandises sans qu'il ait été établi une lettre de transport aérien contenant toutes les mentions indiquées par l'article 9, *a*) à *g*) inclusivement, et par l'article 10, le contrat de transport n'en sera pas moins soumis aux règles de la présente Convention, mais le tansporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent en tout ou en partie sa responsabilité directe ou dérivée des fautes de ses préposés.»

M. MEDEIROS DO PAÇO (Brésil) se demande s'il est bien clair que les sanctions prévues à l'encontre du transporteurs s'appliqueront au cas où les documents établis seront défectueux ou si elles ne joueront que dans le cas où la lettre de transport aérien n'aura pas été établie. [page 40] D'après la rédaction de cet article, on ne voit pas clairement si la lettre de transort aérien doit être établie, sous peine, pour le transporteur, de ne pouvoir se prévaloir des clauses qui diminuent sa responsabilité ou si c'est simplement le cas de la lettre de transport aérien défectueuse. D'autant plus que l'article 5 dit dans son paragraphe 2 :

«Toutefois, l'absence, l'irégularité ou la perte de ce titre ne préjudicie ni à l'existence, ni à la validité du contrat de transport.»

Il semble que cette Convention de droit privé doit se rapprocher de la Convention de droit public du 13 octobre 1919 qui prévoit le connaissement obligatoire. Cette Convention dit, en effet, dans son article 5 que, parmi les titres, doit se trouver le connaissement obligatoire avec le manifeste. Dans cette convention de droit public, les Etats ont inscrit que ce document était obligatoire. Il serait dangereux, semble-t-il, de laisser le moindre doute à cet égard dans la convention de droit privé. D'autant plus qu'il y a un grand intérêt d'ordre pratique à rendre le connaissement obligatorie pour combattre les fraudes, pour le contrôle des articles dont l'exportation peut être défendue et pour l'évasion desquels les voies aériennes pourraient se prêter d'une manière particulière. Il y a un gros intérêt, dans le commerce international, à ce que tout transport international soit accompagné obligatoirement d'une lettre de transport aérien pour que les responsables puissent être facilement connus en cas de faute ou de transgression aux réglements, au sujet de l'exportation de marchandises défendues, et même pour le transport de certains articles pour lesquels la voie aérienne est interdite.

Dans la convention de 1919, il y a, en effet, un article qui défend le transport de certains objets par la voie aérienne.

Il serait utile qu'aucun doute ne se glisse dans les esprits et le Délégué du Brésil damande que l'assemblée soit consultée sur ce point et qu'elle dise si elle entend bien donner à la lettre de transport aérien le caractére obligatoire ou non.

Le Rapporteur répond au Délégué du Brésil sur les deux points qu'il a soulevés :

Le premier point est celui de savoir si, quand il n'y a pas de lettre de transport, pas de document, la sanction prévue par l'article 18 s'applique.

Le second point est celui de savoir s'il faut prévoir l'obligation d'avoir un document à bord.

Le Délégué du Brésil cite, à ce sujet, la convention de 1919. Mais cette convention prévoit uniquement les documents qui doivent se trouver à bord de l'avion, notamment le connaissement. Il a d'ailleurs été signalé que ce mot «connaissement» devait être remplacé ; mais il ne s'y trouve pas l'obligation de créer ce document. En ce qui concerne cette obligation, la question a été discutée à fond, lors de la première réunion, et un système intermédiarire a été adopté, systéme qui arrive à une obligation de fait à cause des sanctions de l'article 18. En effet, une transaction entre le système continental et le système britannique a été admise, car il a été estimé qu'il valait mieux ne pas imposer la lettre de transport aérien et sanctionner son absence de façon à la rendre efficace it nécessaire.

D'autre part, il est évident que du moment qu'il y a un transport, conformément à l'article 1er le régime de la convention s'applique, régime avec toutes ses conséquences, sa limitation, ses responsibilités et les sanctions prévues par la convention elle-même.

[page 41] M. MEDEIROS DO PAÇO signale que, en vertu de l'article 5 de la Convention, paragraphe 2, l'absence de la lettre de transport aérien ne préjudicie ni à l'existence, ni à la validité du contrat de transport et que, dans l'article 18, il n'est pas dit clairement que les sanctions prévues s'appliqueront en cas d'absence de lettre de transport.

M. PITTARD constate que l'articie 18 prévoit la lettre de transport irrégulière et que M. MEDEIROS DO PAÇO demande que l'on prévoie l'absence de lettre de transport. Il semble que l'accord pourrait se faire sur la rédaction suivante :

«Si, pour un transport international, le transporteur accepte des marchandises sans qu'il ait été établi une lettre de transport, ou si la lettre de transport ne contient pas toutes les mentions indiquées par l'article 9, *a*) à *g*) inclusivement, etc. . .»

Le Rapporteur acceptant ce texte, le Président consulte le Comité.

L'article 18 ainsi modifié est mis aux voix et adopté.

M BABINSKI (Pologne) signale que le Comité vient d'adopter un amendement à l'article 18 comportant deux hypothèses : celle de l'absence de lettre de transport aérien et celle de la lettre de transport incomplète. Les mêmes expressions se retrouvant dans d'autres articles, il serait bon de prier le Sous-Comité de Rédaction de veiller à cé que les mêmes expressions soient toujours employées.

La Rapporteur accepte cette suggestion. En effet, il y aura lieu de prévoir les mêmes modifications pour le bulletin de bagages et le billet de passage.

Le Président remarque, alors, que la solution toute naturelle serait d'inviter M. BABINSKI à faire partie du Sous-Comité de Rédaction.

Cette proposition est adoptée.

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[page 63] [Cinquième séance de CITEJA (26 Mai)]

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ARTICLE 3

La Rapporteur expose qu'à l'article 3 les mots «points d'arrêt prévus» ont été supprimés pour l'élégance de la phrase et il a été dit simplement «les arrêts prévus» (lettre c). La seconde modification concerne le dernier alinéa qui se lit ainsi :

«Si, pour un transport international, le transporteur accepte le voyageur sans qu'il ait été établi un billet de passage, ou si le billet ne contient pas les mentions indiquées ci-dessus, le contrat n'en pas moins soumis aux régles de la présente Convention, mais le transporteur n'aura pas le droit de se prévaloir des dispositons de cette Convention qui excluent en tout ou en partie sa responsablité directe ou dérivée des fautes de ses préposés.»

Aucune observation n'étant formulée, l'ensemble de l'article 3, mis aux voix, est adopté.

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[page 65] ARTICLE 18 (nouvel article 17)

La Rapporteur signale qu'une seule modification a été apportée à l'article 18 : « . . sans qu'il ait été établi une lettre de transport aérien ou si la lettre de transport aérien ne contient pas. . . . . ». Cet article, mis aux voix, est adopté.

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[page 99] **ANNEXE C**

RAPPORT

présenté au Comité International Technique
d'Experts Juridiques Aériens
(C.I.T.E.J.A.)
AU NOM DE LA DEUXIEME COMMISSION
par M. Henry De VOS, Rapporteur

[Page 100] **Chapitre II – Titres de transport**

*Section I. – Billet de passage (*Article 3)

La document concernant le transport des voyageurs étant différent de ceux nécessaires pour le trafic des marchandises, un article spécial a été prévu à cet effet lors de la fusion des deux matières : titre de transport et responsabilité.

Le billet de passage ne doit contenir évidemment qu'un minimum de mentions.

D'autre part, la sanction prévue pour le transport des voyageurs sans billet régulier est identique à celle préve pour le transport des bagages et celui des marchandises.

*Section II. – Bulletin de bagages (*Article 4)

La même observation que pour les passagers s'applique à leurs bagages : un article spécial a trait au bulletin de bagages.

Section III. – Lettre de transport aérien
*(*Articles 5 á 20 inclus)

L'objet de ces dispositions se trouve précisé dana lle rapport du 2 avril 1927 qui peut se résumer comme suit : tout en y ajoutant les modifications adoptées par la suite :

1) La lettre de transport aérien constate le transport international des marchandises ; elle n'est qu'un instrument de preuve.

[page 101] La Convention n'impose pas l'obligation d'une lettre de transport ; mais dés qu'elle existe, les dispositions de la Convention s'y appliquent.

Cette formule est une transaction en vue d'aboutir à une adoption unanime des règles de la Convention, certains membres étant d'avis que le transport devrait être constaté obligatoirement par une lettre de transport, les autres estimant qu'en cette matière il convient de laisser les parties libres de sauvegarder leurs intérêts.

2) Une garantie pour la protection des intérêts en cause se trouve dans le droit reconnu au transporteur de demander à l'expéditeur l'établissement et la délivrance d'une lettre de voiture et dans le droit reconu à l'expéditeur

de demander au transporteur l'acceptation d'un pareil document, cette acceptation entraînant du reste l'obligation pour le transporteur de remettre la lettre de transport signée par lui à l'expéditeur.

3) La lettre de transport est établie en trois exemplaires qui ont la même valeur et sont destinés aux trois personnes intéressées directement au transport : l'expéditeur, le transporteur et le destinataire.

4) En ce qui concerne les mentions à insérer dans la lettre de transport, celles indiquant qu'il s'agit d'un document couvrant un transport international (c'est'à-dire celles prévues sous les lettres a), a f), sont indispensables au point de ve de l'exécution de la Convention.

Il en est de même de la mention sous la lettre g) : la nature de la marchandise, parce que des prohibitions peuvent être édictées par certains pays quant à l'entrée ou à la sortie des marchandises.

Les autres mentions de h), à p), présentent une utilté incontestable, mais leur omission ne peut être, suivant certains conceptions nationales, utilement sanctionnée. Il est hautement recommandable que la lettre de transport porte ces mentions, mais leur inscription dépendra surtout de l'intérêt même qu'ont les partiers de les indiquer dans le document formant titre.

Ces mentions, de reste, ne sont pas limitatives. Il peut être utile, par exemplé, dans certains cas, de donner l'indication de l'appareil qui transporte la marchandise.

* * * * *

[page 102] 10) Quant aux sanctions, la difficulté pour certains conceptions nationales de prévoir des mesures adéquates en vue d'assurer l'observation de certaines dispositions de la Convention, a fait adopter un systéme qui apparaît comme éminemment pratique et qui consiste à sanctionner l'obligation découlant des articles 10 et 11,

par la perte éventuelle des avantages qui sont conférés aux parties par certains articles du projet de Convention sur la responsabilité du transporteur.

Les parties ont donc tout intérêt à faire usagé d'une lettre de transport contenant les mentions essentielles.

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[page 107]

AVANT-PROJET DE CONVENTION

sur la responsabilité du transporteur dans les transports internationaux par aéronefs et la lettre du transport aérien

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DEUXIÈME COMMISSION

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[page 108]

CHAPITRE II

TITRE DE TRANSPORT

Section I. – Billet de passage

ARTICLE 3

Dans le transport de voyageurs, le transporteur est tenu de délivrer un billet de passage qui doit contenir les mentions suivantes.:

a) le lieu et la date de l'émission ;

b) les points de départ et de destination ;

c) l'indication sommaire de la voie à suivre (*via*), ainsi que les points d'arrêts prévus ;

d) le nom et l'adresse du ou des transporteurs.

Le billet de passage doit contenir, en outre, une clause stipulant que le transport est soumis au régime de la responabilité établi par la présente Convention.

L'absence, l'irrégularité ou la perte de ce titre de transport ne préjudicie ni à l'existence, ni á la validité du contrat de transport.

Si, pour un transport international, le transporteur accepte le voyageur sans qu'il ait été établi un billet de passage contenant les mentions indiquées cidessus, le contrat de transport n'en sera pas moins soumis aux régles de la présente Convention, mais le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent en tout ou en partie sa responsabilité directe ou dérivée des fautes de ses préposés.

Section II. – Bulletin de Bagages

ARTICLE 4

Dans le transport de bagages, autres que les menus objets personnels dont le voyageur conserve la garde, le transporteur est tenu de délivrer un bulletin de bagages.

Le transporteur est déchargé de sa responsabilité par las lvraison des bagages au porteur du bulletin.

Le bulletin de bagages est établi en deux exemplaires.

Il doit contenir les mentions suivantes :

a) le lieu et la date d'émission ;

b) les points de dép art et de destination ;

c) l'indication sommaire de le voie á suivre (*via*) ainsi que les points d'arrêts prévus ;

d) le nom et l'adresse du ou des transporteurs ;

e) le numéro du billet de passage ;

f) l'indication que le bulletin est établi en deux exemplaires.

Le bulletin de bagages doit contenir une clause stipulant que le transporteur est déchargé de sa responsabilité par la livraison des bagages au porteur du bulletin.

[page 109] Le bulletin de bagages doit contenr, en outre, une cause stipulant que le transport est soumis au régime de la responsabilité établi par la prsente Convention.

L'absence, l'irrégularité ou la perte de ce bulletin de bagages ne préjudicie ni à l'existence, ni à la validité du contrat de transport.

Si, pour un transport international, le transporteur accepte les bagages sans qu'il ait été établi un bulletin contenant les mentions indiquées ci-dessus, jusqu'à *d*) inclusivement, le transporteur n'en sera pas moins soumis aux règles de la présente Convention, mais le transporteur n'aura le droit de se prévaloir des dispositions de cette Convention qui excluent en tout ou en partie sa responsabilité directe ou dérivée des fautes de ses préposés.

Section III. – Lettre de transport aérien

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[page 110] ARTICLE 9

La lettre de transport aérien contient les mentions suivantes :

a) le lieu où le document a été crée et la date à laquelle il a été établi ;

b) les points de départ et de destination ;

c) l'indication sommaire de la voie à surivre (*via*), ainsi que les points d'arrêts prévus ;

d) le nom et l'adresse de l'expéditeur '

e) le nom et l'adresse du ou des transporteurs ;

f) le nom et l'adresse du destinataire, s'il y a lieu ;

g) la nature de la marchandise et les indications nécessaires à son identification ;

h) le nombre, le mode d'emballege, les marques particuliéres ou les numéros des colis ;

i) le poids, la quantité, le volume ou les dimensions de la marchandise ;

k) le prix du transport, s'il est stipulé, la date et le lieu de paiement et la personne qui doit payer ;

l) le prix des marchandises et le montant des frais, si l'envoi est fait contre remboursement ;

m) le montant de la sommé représentant l'intérêt à la livraison déclaré conformément à l'article 25, alinéa 2 ;

n) le nombre d'exemplaires de la lettre de transport aérien ;

o) les documents transmis au transporteur pour accompagner la lettre de transport aérien ;

p) le délai de transport s'il a été stipulé.

Les mentions indiquées sous les lettres *a*) à *g*) inclusivement doivent être obligatoirement inscrites dans la lettre de transport aérien.

ARTICLE 10

La lettre de transport aérien doit contenir une clause stipulant que le transport est soumis au régime de la responsabilité établi par la présente Convention.

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ENGLISH TRANSLATION OF EXCERPTS FROM COMPLETE PROCEEDINGS OF CITEJA'S THIRD SESSION MAY 1928

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[Proceedings of CITEJA second meeting (May 24)]

CHAPTER II

Transportation Documents – Section I. – Passenger Ticket

Article 3.

Paragraph 1

For the transportation of passengers, the carrier must deliver a passenger ticket which shall contain the following particulars:

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) a brief indication of a route to be followed, as well as the agreed stopping places;

(d) the name and address of the carrier or carriers;

The Rapporteur indicated that the IATA had drafted some remarks concerning Article 3:

The first remark requested the elimination from the passenger ticket of the agreed stopping places.

The Rapporteur read the arguments given by the IATA on this matter:

> "It is not advisable for the passenger ticket to contain the agreed stopping places as well. Today daily air service between two points is already available both with and without agreed stops. We cite, as an example, the regular airline Deutsche Luft Hansa,

which has daily service between Berlin and Zurich, partially with stops at Halle, Leipzig, Erfut, and Stuttgart, and partially without stops. Other airline companies should endeavor to organize in the same way, with both direct flights and flights with stops. Although the passenger ticket generally indicates a specific hour, it often happens that changes are made. Considering that several [air] stations are overcrowded with traffic, it cannot be guaranteed that in the event of such changes the stops, as indicated on the flight plan, will not be added to or eliminated.

Under the terms of Article 1, the passenger ticket is required to contain only those stopping places indicated on the flight plan that are located in a country not containing both the place of departure and the place of destination. Consequently, if the agreed stopping place must now be listed on the passenger ticket, this will affect only the last stopping places.

In setting forth this proposal, we should like to draw attention to the fact that airline companies do not have in their respective stations as large a contingent of personnel as do, for instance, the railroads or maritime shipping companies. For that reason, available personnel should not be encumbered with any paperwork that is not absolutely essential. That is especially important if the faulty issuance of a passenger ticket could result in some harm to the airline.

The IATA set forth a second proposal: the addition of the baggage check number to the passenger ticket.

The first of these proposals—the elimination of letter (c)—had been studied previously by the experts, who had discussed and rejected it; therefore the Rapporteur did not accept it. The second proposal was a practical matter and

could be of interest: since Article 4 provides for the number of the passenger ticket, it would be possible to stipulate that the number of the baggage check be entered on the passenger ticket. From the standpoint of the Convention, however, this proposal has no legal bearing; it is useful only for the carrier, who would include this particular in the ticket whether this were stated in the Convention or not.

The Chairman asked the Committee if it wished to accept this suggestion, which did not seem to have a place in the text of the Convention.

Inasmuch as there were no other comments concerning the first paragraph, and the IATA suggestion was not accepted, the first paragraph of Article 3 was put to a vote and adopted.

Paragraph 2

The passenger ticket must also contain a statement that the transportation is subject to the rules relating to liability established by this Convention.

Mr. Pittard remarked that it was understood that sample tickets would be annexed to the Convention, as had been done for the Bern Convention on railroads. He stated that these samples should contain the minimum amount of information, since the airlines were free to add any additional data they might consider useful.

The Rapporteur indicated that this matter was officially covered in Article 19.

Paragraph 2 was therefore put to a vote and adopted.

Paragraph 3

The absence, irregularity, or loss of this transportation document shall not affect the existence or the validity of the contract of transportation.

Inasmuch as there were no comments, paragraph 3 was adopted.

Paragraph 4

If, for international transportation, the carrier accepts a passenger without a passenger ticket containing the particulars indicated above having been made out, the contract of transportation shall still be subject to the rules of this Convention, but the carrier shall not be entitled to avail himself of those provisions of this Convention which exclude fully or partially his direct liability or that deriving from the negligence of his agents.

Mr. Youpis indicated that the penalty provided for in this paragraph was too severe for the case of a simple omission. The actual words were, ". . . without a passenger ticket containing the particulars indicated above having been made out . . .". The omission of the place of issuance or of the date, for example, would divest the carrier of the right to avail himself of those provisions releasing him from liability. He requested that the following sentence be added at the end of paragraph 4: "If this passenger ticket does not contain one of the particulars indicated above, the carrier shall forfeit this right only if no harm was caused to the passengers."

Mr. Pittard considered that the Convention must contain its own defense. This issue was afforded in-depth study. If one of the particulars required is omitted, that is a professional error, and it should carry a penalty.

The Rapporteur added that as Mr. Pittard had just indicated, long discussions, held earlier, had resulted in the text currently proposed; the only practical penalty found was that deriving from the Convention itself. Those omissions Mr. Youpis considered minor were not minor at all, since everything indicated as a compulsory particular was

extremely important. He recalled what Mr. Cogliolo had said previously on this subject:

"A public transportation service should always have its papers in order, and one should always be harder on it than on a simple lapse of memory on the part of a passenger."

Mr. Youpis still considered that the current text was too severe and could be attenuated in the way he had indicated in those cases where no one had been wronged.

The Rapporteur adhered to the text of the Commission. He noted that this provision, which had frequently been attacked in the course of previous discussions, was always retained for the following reason: it was an essential provision of the Convention. Indeed, this text constituted a compromise among the various opinions of the government delegations to the CITEJA: some delegates had requested that the document be made compulsory; others called for a civil penalty, and still others, a criminal penalty. The text finally adopted was based on the British view. It represented a compromise accepted by all members of the Commission. If this text failed, it was to be feared that the entire Convention would have to be called into question.

Mr. Youpis adhered to his amendment, to which he gave the following final form: "If the passenger ticket does not contain any one of the particulars indicated above, the carrier shall forfeit this right only if no harm was caused to the passengers."

The amendment, put to a vote, was not adopted.

The Chairman put paragraph 4, as currently written, to a vote; paragraph 4 was adopted.

Article 3 was therefore adopted in its entirety.

Section II. – Baggage Check

Article 4

Paragraph 1

For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

Inasmuch as there were no comments, paragraph 1 was put to a vote and adopted.

Paragraph 2

The carrier is released from liability upon delivery of the baggage to the bearer of the check.

Mr. Ripert commented that this text seemed to be saying that no claim is possible after the delivery of the baggage. He felt that what it had intended to say was simply that the carrier is released from liability when he has handed the baggage over to the bearer of the check, and that the question of liability for the baggage itself had not been settled, which it should be, as in the case of goods.

The Chairman felt that under the circumstances, this was the person qualified to take delivery of the baggage. He therefore proposed that the text be worded as follows: "The delivery to the traveler of his baggage shall be considered to have been validly made upon its surrender to the bearer of the check."

This wording, put to a vote, was adopted.

Paragraph 3

The baggage check shall be made out in duplicate.

Mr. Wolterbeek Muller (Netherlands) felt that it was not useful to state in the Convention that the baggage check shall be made out in duplicate. The carrier will do so if he wishes, but there must be just one copy required: the copy for the traveler.

Mr. Ripert answered that the same reasoning had been used for the air waybill: the carrier's document accompanies the goods or the baggage, so it is useful for him to have one copy remaining.

Mr. Richter added that if the traveler were to lose his baggage check, he could request that the other copy be produced and use that second copy as his proof.

Aided by these explanations, the Chairman put paragraph 3 to a vote, and it was adopted.

Paragraph 4

* * * * *

It should contain the following particulars:

(a) the place and date of issue;

(b) the place of departure and destination;

(c) a brief indication of the route to be followed and the agreed stopping places;

(d) the name and address of the carrier or carriers;

(e) the number of the passenger ticket;

(f) the statement that the baggage check is made out in duplicate.

Mr. Pittard pointed out that whereas a few moments ago there had been a request that the baggage check number be entered on the passenger ticket, the Commission considered it preferable to enter the passenger ticket on the baggage check.

No other comment was made, and paragraph 4 was adopted.

Paragraph 5

The baggage check must contain a statement that the carrier is released from liability upon delivery of the baggage to the bearer of the check.

Mr. Ripert noted that the wording of this paragraph seemed to indicate that the baggage check was tantamount to a bearer bond, giving the transportation company the right to deliver the baggage to the bearer of the check, without any provision being made for the possibility that the traveler would object to the delivery of his baggage to the bearer. Anyone holding the baggage check, regardless of the way in which he had obtained this check, could collect the baggage. In this way, the Committee was establishing a sort of bearer bond, which was not what it had intended.

Mr. Richter: This is a bearer bond in the legal sense. The carrier may be released from liability upon the surrender of the baggage to the bearer of the check, but the bearer of the baggage check may not demand delivery, and the carrier, should he have some doubt, may refuse delivery.

The Chairman considered that it should be made clear that the bearer of the check was considered the representative or agent of the owner of the baggage. He felt that Mr. Ripert's concern should therefore be addressed and that there should be an indication that this check was not equivalent to a bearer bond.

Mr. Pittard noted that this was a matter of *res inter alios acta,* and that it could be prevented. It was not, however, a bearer bond.

After a brief exchange of views between Sir Alfred Dennis, Mr. Wolterbeek Muller, and Mr. Youpis, the Chairman noted that the Committee concurred on substance and that it was simply a matter of wording. He suggested the following wording: "The delivery to the traveler of his baggage shall be considered to have been validly made upon its surrender to the bearer of the check."

This text, accepted by the Rapporteur, was adopted by the Committee, with the understanding that the Drafting

Subcommittee would review the final form to be given this statement.

Paragraph 6

The baggage check must also contain a statement that the transportation is subject to the rules relating to liability established by this Convention.

Inasmuch as there were no comments, paragraph 6 was adopted.

Paragraph 7

The absence, irregularity, or loss of this baggage check shall not affect the existence or the validity of the contract of transportation.

Inasmuch as there were no comments, paragraph 7 was adopted.

Paragraph 8

If, for international transportation, the carrier accepts baggage without a check containing the particulars indicated above, up to and including (d), having been made out, the carrier shall still be subject to the rules of this Convention, but the carrier shall not be entitled to avail himself of those provisions of this Convention which exclude fully or partially his direct liability or that deriving from the errors of his employees.

Inasmuch as there were no comments, paragraph 8 was adopted.

Article 4 was therefore adopted in its entirety.

The Chairman announced that the discussion would continue on the following morning, May 25, at 11:00 a.m.

The meeting was adjourned at 7:00 p.m.

* * * * *

[Third CITEJA meeting (May 25)]

Article 18

"If, for international transportation, the carrier accepts goods without an air waybill having been made out containing all the particulars set out in Article 9 (a) to (g) inclusive, and in Article 10, the contract of transportation shall still be subject to the rules of this convention, but the carrier shall not be entitled to avail himself of the provisions of this convention which totally or partially exclude his direct liability or liability derived from the negligence of his agents."

Mr. Medeiros do Paco (Brazil) asked whether it was clear that the penalties provided against the carrier will be applied if the documents made out are defective or if they will apply only when the air waybill has not been made out.

As this article is worded, it is unclear whether the air waybill must be made out, subject to penalty for the carrier of being unable to avail himself of the clauses that reduce his liability, or whether that is simply the case for the defective air waybill. Moreover, Article 5(a) states:

"Nonetheless, the absence, irregularity, or loss of this document shall not prejudice the existence or the validity of the contract of transportation."

It seems that this private-law convention should become more like the public-law convention of October 13, 1919, which provides, in Article 5, for a mandatory bill of lading with the manifest, among other documents. In this public-law convention, the States indicated that this document was mandatory. It seems dangerous to leave the slightest doubt in this respect in the private-law convention, particularly since there is great interest in practical terms in

making the bill of lading mandatory in order to combat fraud, to control articles whose exportation may be prohibited, and to control evasion, to which the airways particularly seem to lend themselves. There is great interest in international trade in having all international transportation accompanied mandatorily by an air waybill so that the persons responsible can be easily identified in case of negligence or transgression of the rules on the exportation of prohibited goods and even for the transportation of certain articles for which air transportation is prohibited.

In the 1919 convention there is an article that prohibits air transportation of certain items.

Thus there should be no room for doubt, and the Brazilian delegate requests that the assembly be consulted on this point and state whether or not it intends to make the air waybill mandatory.

The Rapporteur responded to the two points raised by the Brazilian delegate.

The first point was to determine whether the penalty provided in Article 18 applied when there was no waybill or document.

The second point was to determine whether it should be made obligatory to have a document on board.

The Brazilian delegate cited the 1919 convention on this subject. But this convention solely provides for documents which should be on board the aircraft, notably the bill of lading. It has also been noted that the word "*connaissement*" [bill of lading] should be replaced, but there seems to be no obligation to create this document. Insofar as this obligation is concerned, the issue was discussed in depth during the initial meeting, and an intermediary system was adopted, a system that amounts to a *de facto* obligation because of the penalties in Article 18. Indeed, a compromise between the continental system and the British

system was allowed, for it was thought better not to impose the air waybill and to penalize its absence so as to make it effective and necessary.

Moreover, it is evident that, once a transportation occurs, in conformity with Article 1 the regime of the convention applies, a regime with all its consequences, limitation, liabilities, and the penalties provided by the convention itself.

Mr. Medeiros do Paco noted that, under Article 5(2) of the convention, the absence of the air waybill does not affect the existence or the validity of the contract of transportation and that in Article 18 it is not clearly stated that the penalties stipulated will apply in the absence of the waybill.

Mr. Pittard noted that Article 18 provides for the irregular waybill and that Mr. Medeiros do Paco is requesting that provision be made for the absence of the waybill. It seems that agreement could be reached on the following wording:

"If, for international transportation, the carrier accepts goods without a waybill having been made out, or if the waybill does not contain all the particulars set out in Article 9 (a) to (g) inclusive, etc. . . ."

Since the Rapporteur accepted this text, the Chairman consulted the Committee.

Article 18 thus amended was put to a vote and adopted.

Mr. Babinski (Poland) noted that the Committee had just adopted an amendment to Article 18 involving two assumptions: the absence of the air waybill and an incomplete waybill. Since the same expressions are used in other articles, it would be advisable to request the Drafting Subcommittee to ensure that these same expressions are always used.

The Rapporteur accepted this suggestion. It would be advisable to ensure that the same changes are made for the baggage check and the passenger ticket.

The Chairman remarked then, that the obvious solution would be to invite Mr. Babinski to join the Drafting Subcommittee.

This proposal was adopted.

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[Fifth CITEJA meeting (May 26)]

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Article 3

The Rapporteur stated that in Article 3 the words "*points d'arrêt prévus*" [agreed stopping places] were eliminated for stylistic reasons and "*les arrêts prévus*" was simply used (letter c). The second change concerned the final paragraph, which reads as follows:

"If, for international transportation, the carrier accepts a passenger without a passenger ticket having been made out, or if the ticket does not contain the above-mentioned particulars, the contract is still subject to the rules of this Convention, but the carrier shall not be entitled to avail himself of those provisions of this convention which totally or partially exclude his direct liability or liability derived from the negligence of his agents."

Since no observations were made, all of Article 3 was put to a vote and adopted.

* * * * *

Article 18 (new Article 17)

The Rapporteur noted that only one change was made to Article 18: "without an air waybill having been made

out, or if the air waybill does not contain . . ." This article was put to a vote and adopted.

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Annex C

Report Submitted on Behalf of the Second Commission
by Henry de Vos, Rapporteur
to the
International Technical Committee of
Aerial Legal Experts

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Chapter II.—Transportation Documents

Section I.—Passenger Ticket (Article 3)

Since the document involving the transportation of passengers is different from those needed for transporting goods, a special article was anticipated for such purpose when the two subjects were merged, i.e., transportation document and liability.

Naturally, the particulars on the passenger ticket must be kept to a minimum.

In addition, the sanction for transporting passengers without regular tickets is the same as that for the transportation of baggage and of goods.

Section II.—Baggage Check (Article 4)

The remark concerning passengers applies to their baggage as well: a special article covers the baggage check.

Section III—Air Waybill (Articles 5 through 20)

The purpose of these provisions was clarified in the

report dated April 2, 1927, summarized as follows with such changes as were adopted subsequently:

(1) The air waybill certifies the international transportation of goods; it is a document of proof only.

The Convention does not make the air waybill mandatory, but when such document exists, the provisions of the Convention apply thereto.

This procedure is a mechanism to achieve unanimous adoption of the rules of the Convention, since some participants feel that an air waybill should be required to certify transportation, while others believe that the parties should be free to protect their own interests in this regard.

(2) The protection of such interests is guaranteed by the right of the carrier to request the consignor make out and hand over to him a waybill and the right of the consignor to request the carrier to accept a like document, such acceptance implying the obligation by the carrier to hand over its signed air waybill to the consignor.

(3) The air waybill is drawn up in three copies of equal value for the three parties directly involved in the transportation: the consignor; the carrier; and the consignee.

(4) Regarding the information to be included in the air waybill, those particulars indicating that the document covers international transportation, i.e., (a) through (f), are essential from the standpoint of the Convention's enforcement.

The same applies to the particular under (g), the nature of the goods, because some countries may prohibit the entry or exit of certain goods.

The other particulars under (h) through (p) are of undisputed usefulness, yet failure to include them cannot, in the view of certain nations, be advantageously penalized. It is highly recommended that the air waybill include such

particulars, but their inclusion will depend primarily on the parties' own interest in mentioning them in the document.

Such particulars are not, in any case, restrictive; in some cases it may be useful to specify, for example, the aircraft transporting the goods.

* * * * *

(10) With respect to penalties, the difficulty for some nations in providing adequate measures to ensure the enforcement of certain provisions of the Convention resulted in the adoption of an eminently practical system of enforcing the obligation arising under Articles 10 and 11 by possible loss of the advantages to the parties under certain articles of the draft Convention on the liability of the carrier.

It is therefore in the best interests of the parties to use an air waybill containing the essential particulars.

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PRELIMINARY DRAFT OF THE CONVENTION

relating to documents of air carriage and the liability of the carrier in international carriage by aircraft

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SECOND COMMISSION

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CHAPTER II

Transportation Documents

Section I. – Passenger Ticket

For the transportation of passengers, the carrier must

deliver a passenger ticket which shall contain the following particulars:

a) the place and date of issue;

b) the place of departure and of destination;

c) a brief indication of a route to be followed, as well as the agreed stopping places;

d) the name and address of the carrier or carriers;

The passenger ticket must also contain a statement that the transportation is subject to the rules relating to liability established by this Convention.

The absence, irregularity, or loss of this transportation document shall not affect the existence or the validity of the contract of transportation.

If, for international transportation, the carrier accepts a passenger without a ticket containing the particulars having been made out, the contract of transportation shall still be subject to the rules of this Convention, but the carrier shall not be entitled to avail himself of those provisions of this Convention which exclude fully or partially his direct liability or that deriving from the negligence of his agents.

Section II – Baggage Checks

ARTICLE 4

For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

The carrier is released from liability upon delivery of the baggage to the bearer of the check.

The baggage check shall be made out in duplicate.

It should contain the following particulars:

a) the place and date of issue;

b) the place of departure and destination;

c) a brief indication of the route to be followed and the agreed stopping places;

d) the name and address of the carrier or carriers;

e) the number of the passenger ticket;

f) the statement that the baggage check is made out in duplicate;

The baggage check must contain a statement that the carrier is released from liability upon delivery of the baggage to the bearer of the check.

The baggage check must also contain a statement that the transportation is subject to the rules relating to liability established by this Convention.

The absence, irregularity, or loss of this baggage check shall not affect the existence or the validity of the contract of transportation.

If, for international transportation, the carrier accepts baggage without a check containing the particulars indicated above, up to and including d), having been made out, the carrier shall still be subject to the rules of this Convention, but the carrier shall not be entitled to avail himself of those provisions of this Convention which exclude fully or partially his direct liability or that deriving from the errors of his employees.

Section III—Air Waybill

The air waybill shall contain the following particulars:

a) the place and date of its execution;

b) the place of departure and of destination;

c) the itinerary to be followed, the stopover points for transshipment;

d) the name and address of the consignor;

e) the name and address of the carrier or carriers;

f) the name and address of the consignee, if the case so requires;

g) the nature of the goods and characteristics necessary for its identification;

h) the number of packages, the method of packing, and the particular marks or numbers upon them;

i) the weight, quantity, capacity, or dimensions of the goods;

k) [sic] the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay for it;

l) the price of the goods and the amount of the expenses incurred, if the goods are sent for payment on delivery;

m) the amount of the value declared in accordance with article 25, line 2;

n) the number of parts of the air waybill;

o) the documents handed to the carrier to accompany the air waybill;

p) the time fixed for the transportation, if it is agreed upon.

The particulars indicated under letters a) through g) must be contained in the air waybill.

ARTICLE 10

The air waybill shall contain a statement that the transportation is subject to the rules relating to liability established by this Convention.

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APPENDIX F

COMITÉ INTERNATIONAL TECHNIQUE D'EXPERTS JURIDIQUES AÉRIENS (C.I. T. E. J.A.)

[Octobre 1928]

AVANT-PROJET DE CONVENTION RELATIVE AUX DOCUMENTS DE TRANSPORT AÉRIEN ET A LA RESPONSABILITÉ DU TRANSPORTEUR DAN LES TRANSPORTS INTERNATIONAUX PAR AÉRONEFS

I. – Rapport au nom du Comité International Technique d'Experts Juridiques Aériens, par M. Henry DE Vos, Rapporteur, sur l'Avant-Projet de Convention relative aux documents de transport aérien et à la responsabilité du transporteur dans les transports internationaux par aéronefs.

II. – Avant-Projet de Convention adopté par le C. I. T. E. J. A. au cours de sa Troisième Session (Mai 1928).

III. – Annexe (Documents de transport visés à l'article 19 de l'Avant-Projet de Convention).

[page 3] I

RAPPORT

présenté au nom du Comité International Technique d'Experts Juridiques Aériens

par M. Henry DE VOS, Rapporteur

su l'Avant-Projet de Convention relative aux documents de transport aérien et à la responsabilité du transporteur dans les transports internationaux par aéronefs

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Le Comité International Technique d'Experts Juridiques Aériens, au cours de sa réunion de Madrid en mai 1928, a définitivement mis au point l'Avant-Projet de Convention ci-annexé ayant pour objet : *certaines règles relatives aux documents de transport aérien* : billet de passage, bulletin de bagages, et lettre de transport aérien, *ainsi qu'à la responsabilité du transporteur aérien* et à la limitation de cette responsabilité.

Ce projet est l'aboutissement de nombreuses études de préparation qui ont trouvé leur expression dans huit textes antérieurs concernant soit la responsabilité du transporteur, soit la lettre de transport.

Un premier avant-projet de Convention fixant les bases de la responsabilité du transporteur et de la limitation de cette responsabilité en matière de transports aériens, avait été présenté par le Gouvernement français à une Conférence internationale qui se tint à Paris le 26 octobre 1925.

Cette Conférence institua une Commission qui remania ce texte. La Conférence fut saisie le 3 novembre 1925 de l'Avant-Projet ainsi amendé. Elle y apporta de nouvelles modifications le 6 novembre 1925.

D'autre part, un premier Avant-Projet sur la lettre de transport fut présenté à la Deuxième Commission du C. I. T. E. J. A. (créé entre temps) qui se réunit à Paris le 30 mars 1927.

A la suite de l'examen de ce projet par le C. I. T. E. J. A. en avril 1927, ce texte fut légèrement amendé.

Le C. I. T. E. J. A. ayant au cours de cette même réunion décidé d'examiner la possibilité de fusionner en une Convention unique les deux matières — responsabilité et documents de transport — un nouvel avant-projet fut présenté en juin 1927.

Ce texte fut modifié à la suite des délibérations de la Deuxième Commission du C. I. T. E. J. A. réunie à Bruxelles du 7 au 10 novembre 1927.

Une nouvelle réunion de cette Commission eut lieu à Paris les 21 et 22 mars 1928 au cours de laquelle les textes antérieurs furent amendés.

Enfin, ceux-ci revinrent devant le C. I. T. E. J. A. qui les mit définitivement au point à Madrid en mai 1928.

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CHAPITRE II

TITRES DE TRANSPORT

Section I. – Billet de passage

Un document spécial est prévu pour le transport des voyageurs. Ce document est nécessairement différent de ceux utilisés pour le transport des bagages et le trafic des marchandises.

Ce billet de passage ne doit contenir qu'un minimum de mentions.

D'autre part, la sanction prévue pour le transport des voyageurs sans billet ou avec un billet non conforme à la Convention est identique à celle prévue pour le transport des bagages et celui des marchandises.

Cette formule de sanction constitue une transaction entre les différentes opinions des Délégations des Gouvernements au C.I.T.E.J.A., dont les unes demandaient que le document de transport fut obligatoire, certaines avec sanction civile et d'autres avec sanction pénale, et dont les autres défendaient le principe de la liberté.

Section II. – Bulletin de bagages

La même observation que pour les passagers s'applique à leurs bagages. Un article spécial a trait au bulletin de bagages.

Il est prévu que le transporteur peut valablement remettre les bagages au porteur du bulletin. Mais ce bulletin ne constitue pas un titre au porteur ; le transporteur peut, s'il a des doutes au sujet de leur propriété, refuser la délivraison, sans preuve, des bagages. Le voyageur peut, d'autre part, demander, en cas de perte de son bulletin, la production du second exemplaire afin de rapporter la preuve qu'il est le propriétaire. Enfin, la responsabilité du transporteur pour les bagages est une responsabilité de droit commun et la preuve de la faute incombe au propriétaire de bagage.

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III

ANNEXE

(Documents de transport visés à l'article 19 de l'Avant-Projet de Convention)

MODÈLE I

BULLETIN INTERNATIONAL DE PASSAGE

RECTO

N°	N°	N°
Transporteur	*Transporteur*	*Transporteur*
Adresse	*Adresse*	*Adresse*
Points de départ :	Points de départ :	Points de départ :
et de destination :	et de destination :	et de destination :
via	*via*	*via*
Arrêts prévus	Arrêts prévus	Arrêts prévus
		CONDITIONS DE TRANSPORT AU DOS
Date	Date	Billet délivré à le
Service	Service	pour le voyage
Prix	Prix	Prix

VERSO

Le présent bulletin de passage est soumis au régime de la responsabilité établi par la Convention internationale du

DISPOSITIONS PRINCIPALES

MODÈLE II

BULLETIN INTERNATIONAL DE BAGAGES

103a

RECTO

N°_____ du billet de passage.

Transporteur _____

Adresse _____

Points de départ _____

et de destination _____

via _____

Arrêts prévus _____

NOMBRE	POIDS	VOLUME ET DIMENSIONS	VALEUR DU BAGAGE
			Pour l'assurance Pour la douane

Date : _____

N°_____ du billet de passage.

Transporteur _____

Adresse _____

Points de départ _____

et de destination _____

via _____

Arrêts prévus _____

NOMBRE	POIDS	VOLUME ET DIMENSIONS	VALEUR DU BAGAGE
			Pour l'assurance Pour la douane

Fait en double à _____ *le* _____

La livraison des bagages au voyageur se fait valablement au porteur du bulletin.

VERSO

Le présent bulletin de bagages est soumis au régime de la responsabilité établi par la Convention internationale du _____

DISPOSITIONS PRINCIPALES

MODÈLE III

LETTRE INTERNATIONALE DE TRANSPORT AÉRIEN

RECTO

Destinataire _____ Adresse _____

Lieu de destination _____

Itinéraire _____

NATURE DE LA MARCHANDISE ET INDICATIONS POUR IDENTIFICATION	NOMBRE	MARQUES NUMÉROS	MODE D'EMBALLAGE	POIDS VOLUME DIMENSIONS	QUANTITÉ CONTENANCE	ÉTAT CONDITIONNEMENT	VALEUR DE LA MARCHANDISE
							Pour l'assurance
							Pour la douane

Intérêt à la livraison _____

(montant en toutes lettres)

Transport payé (ou dû).
Frais et droits de douane dus par le destinataire (ou à réclamer à l'expéditeur).
Frais de réexpédition dus par le destinataire (ou à réclamer à l'expéditeur).

DOCUMENTS JOINTS : _____

Instructions ou informations de l'expéditeur (en cas de refus du colis, etc.) :

PAYÉ PAR L'EXPÉDITEUR	FRAIS	DU PAR LE DESTINATAIRE — VALEUR MONÉTAIRE DES PAYS TRANSITAIRES	DU PAR LE DESTINATAIRE — MONNAIE DU PAYS DE DESTINATION
	Transport _____ par kilogr.		
	Assurance		
	Droits de douane, dédouanement.		
	Frais de manipulation, remise à domicile		
	_____		
	TOTAL. . . .		

La signature de cette lettre de voiture entraîne l'acceptation des conditions inscrites au dos de cette feuille.

L'EXPÉDITEUR : Nom et adresse _____

Signature : _____

Fait en _____ exemplaires, à _____, le _____

POUR L'EXPÉDITEUR :
(ou pour le Transporteur)

Expédié par avion : _____
Date : _____
Aérodrome de départ : _____
Transporteur : _____
(nom et adresse) : _____
Signature : _____

La partie encadrée à remplir par le Transporteur.

VERSO

La présente lettre de transport est soumise au régime de la responsabilité établi par la Convention internationale du _____

DISPOSITIONS PRINCIPALES

[English Translation]

INTERNATIONAL TECHNICAL COMMITTEE
OF
AERIAL LEGAL EXPERTS
(C.I.T.E.J.A.)

[October 1928]

TENTATIVE DRAFT OF CONVENTION

REGARDING AERIAL TRANSPORTATION DOCUMENTS AND THE RESPONSIBILITY OF THE CARRIER IN INTERNATIONAL TRANSPORTATION BY AIRCRAFT.

I. Report in the name of the International Technical Committee of Aerial Legal Experts by Mr. Henry de Vos, Reporter, on the Tentative Draft of Convention regarding aerial transportation documents and the responsibility of the carrier in international transportation by aircraft.

II. Tentative Draft of Convention adopted by the C.I.T.E.J.A. during its Third Meeting (May, 1928)

III. Annex (Transportation Documents mentioned in Article 19 of the Tentative Draft of Convention).

I

REPORT

presented in the name of the International Technical Committee of Aerial Legal Experts

by Mr. Henry de Vos, Reporter,

on the Tentative Draft of Convention relating to aerial transportation documents and to the responsibility of the carrier in international transportation by aircraft.

The International Technical Committee of Aerial Legal Experts, during its meeting at Madrid in May, 1928, definitely decided on the Tentative Draft of Convention hereto annexed, having as its aim: certain rules relating to aerial transportation documents: passage ticket, baggage check, and aerial waybill, and also to the responsibility of the aerial carrier and to the limitation of that responsibility.

This draft is the result of numerous preparatory studies which found expression in eight previous texts regarding either the responsibility of the carrier or the transportation document.

An original tentative draft of Convention fixing the bases for the responsibility of the carrier and the limitation of that responsibility was presented by the French Government at an International Conference held at Paris on October 26, 1925.

That Conference formed a Commission which revised the text. The Conference was informed of the Tentative Draft as thus amended on November 3, 1925. New changes were made in it on November 6, 1925.

Further, a first Tentative Draft on the waybill was presented to the Second Commission of the C.I.T.E.J.A. (which had been created meanwhile) which met at Paris on March 30, 1927.

This text was slightly modified after an examination of this draft by the C.I.T.E.J.A. in April, 1927.

The C.I.T.E.J.A., during this same meeting, having decided to examine the possibility of uniting the two subjects—responsibility and transportation documents—a new tentative draft was presented in June, 1927.

This text was altered after the deliberations of the Second Commission of the C.I.T.E.J.A. meeting at Brussels from November 7 to 10, 1927.

Another meeting of this Commission took place at Paris on March 21 and 22, 1928, during which the former texts were amended.

Finally, they were brought before the C.I.T.E.J.A. again, which put them into definite form at Madrid in May, 1928.

* * * * *

CHAPTER II
TRANSPORTATION DOCUMENTS

Section I—Passage Ticket.

A special document is provided for the transportation of travelers. This document is necessarily different from those used for the transportation of baggage and the carrying of merchandise.

This passage ticket should contain a minimum of notation.

Further, the sanction given for the transportation of passengers without a ticket or with a ticket which does not conform to the Convention is the same as that given for the transportation of baggage and that of merchandise.

This formula of sanction constitutes a compromise of the various opinions of the Governmental Delegations to the C.I.T.E.J.A. some of whom asked that the transportation document be compulsory, certain ones with civil sanction and others with a penal clause, and others of whom defended the principle of freedom.

Section II. – Baggage Check.

The observation made requiring passengers applies likewise to their baggage. A special article is concerned with the baggage check.

It is provided that the carrier may validly return the baggage to the holder of the check. But this check does not constitute a title to the bearer; the carrier may, if he is in doubt as to their ownership, refuse to deliver the baggage without proof. On the other hand, the traveler may, in case of loss of his check, request the delivery of a second check, in order to have proof that he is the owner. Finally, the responsibility of the carrier for the baggage is a common-law responsibility and proof of fault devolves on the owner of the baggage.

* * * * *

APPENDIX G

EXCERPTS FROM REPORT OF THE PREPARATORY COMMITTEE TO THE WARSAW CONFERENCE ON PROPOSED AMENDMENTS SUBMITTED TO THE CONFERENCE (IN FRENCH)

COMMISSION PREPARATOIRE

ANALYSE DES AMENDMENTS.

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* * * * *

ARTICLE 3

1er alinea –

Proposition polonaise – Question de *fond* (2).

Lettre c) – Propositions allemande, britannique et hongroise – Question de *fond* (2).

Lettre d) – Proposition italienne – Question de *rédaction* – Propositions allemande et britannique – Question de *fond* (2).

Lettre e) additionnelle – Propositions allemande et tchécoslovaque (prix de transport) – Question de *fond* (2).

Lettre f) additionnelle – Propositions polonaise et brésilienne (mentions du voyageur) – Questioin de *fond* (2).

4ème alinéa –

Proposition japonaise en rapport avec le dernier alinéa de l'article 4 – Il y aura lieu de reprendre la même formule générale de rédaction.

Proposition hellénique (sanctions) – Question de *fond* (2).

Proposition allemande – Question de *rédaction*.

ARTICLE 4

4ème alinéa –

Lettre a) – Proposition britannique (suppression) – Question de *fond* (2).

Lettre c) – Proposition britannique, allemande et hongroise (suppression) – Question de *fond* (2).

Lettre d) – Propositon italienne – Question de *rédaction*. Propositon allemande (suppression) – Question de *fond* (2).

Lettre f) – Proposition britannique (suppression) – Question de *fond* (2).

Lettre h) additionnelle – Propositions suisse et allemande (adjonction du nombre des colis, etc. . .) – Question de *fond* (2).

Lettre i) additionnelle – Proposition allemande (inteérêt à la libraison) – Question de *fond* (2).

Lettre l) additionnelle – Proposition allemande et tchécoslovaque (prix du transport) – Question de *fond* (2).

5ème alinéa –

Proposition allemande – Question de *rédaction*.

dernier alinéa –

Proposition japonaise (voir article 3, dernier alinéa).

Deuxième proposition japonaise (mentions obligatoires) – Question de *fond* (2).

Proposition suisse (nouvelles mentions obligatoires) – Question de *fond* (2).

Proposition hellénique (voir article 3) – Question de *fond* (2).

EXCERPTS FROM PROPOSED AMENDMENT OF GREEK DELEGATION SUBMITTED TO THE WARSAW CONFERENCE (IN FRENCH)

PROPOSITION DE LA DELEGATON HELLENIQUE

ARTICLE 3 – paragraphe 4 –

Conformément à l'article 22 du projet, dans le cas d'un accident, le transporteur peut dégager sa responsabilité s'il prouve que lui et ses préposés, ont pris les mesures raisonnables pour éviter le dommage, ou qu'il leur était impossible de les prendre.

Toutefois, d'après l'article 3, le transporteur perd cet avantage, si le billet de passage ne contient pas les mentions indiquées dans cet article.

Il se peut, en effet, que par une simple négligence le transporteur ait omis de mentionner dans le billet de passage le lieu de l'émission, ou le point de départ, ou son nom et son adresse; ou même qu'ill conserve dans le billet son ancienne adresse, ou enfin qu'il ne signale pas un arrêt intermédiaire.

Ce sont là, en général, des omissions sans grande importance pour la partie, parce que il est connu ou facile á établir que le billet a été émis et le dêpart a eu lieu de l'aérodrome de telle ville, que l'avion appartient à telle compagnie, ou parce que l'arrêt intermédiaire peut être sans intérêt pour le contractant.

On peut se demander pourquoit une telle omission, sans importance pour la plupart des cas, devrait entraï, dans tous les cas, une sanction aussi grave que celle prévue par l'article 3 paragraphe 4.

Si l'omission est sans intérêt pour l'autre partie et si elle ne lui cause aucun dommage, comment pourrait-on justifier cette sanction sévère à la charge due transporteur?

Cette sanction est justifiée seulement dans le cas où l'omission d'une mention aurait engendré un dommage au passager, comme il peut arriver dans certaines circonstances.

Mais qui jugera s'il y a dommage à cause de cette omission à l'autre contractant, et si ce dommage est tel qu'il faut faire perdre au transporteur la facilité de se dégager par la preuve qu'il a fait le nécessaire pour éviter l'accident? Il n'y a certes que le tribunal, saisi de l'affaire, qui pourra faire cette appréciation.

C'est pour ces raisons que nous proposons de modifier l'alinéa 4 de l'article 3 du projet comme suit :

"Si, pour un transport international, le transporteur accepte le voyageur sans qu'il ait étali un billet de passage, le contrat de transport n'en sera pas moins soumis aux règles de la présente convention, mais le transporteur n'aura pas le droit de se prévaloir des dispositions de cetter Convention qui excluent en tout ou en partie sa responsabilité directe ou dérivée des fautes de ses préposés.

"*Si le billet de passage ne contient passage pas une des mentions in diquées ci-dessus, le transporteur sera privé de ce droit dans le cas, oú, d'apprès l'appréciation du tribunal, un dommàge serait causé de ce fait à l'autre partie.*"

Pour les mêmes raisons il faudrait modifier dans le même sens l'alinéa 7 de l'article 4 pour le bulletin de bagages et l'article 17 pour la lettre du transport.

EXCERPTS FROM PROPOSED AMENDMENTS OF JAPANESE DELEGATION SUBMITTED TO THE WARSAW CONFERENCE (IN FRENCH)

OBSERVATIONS

PRESENTEES PAR LA DELEGATION JAPONAISE

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ARTICLES 3 & 4–

Il ne ressort pas clairement du texte, en particulier de l'article 4, si la mention de la clause concernant la responsabilité du transporteur est obligatoire, ainsi qu'il est disposé à l'article 17 pour les marchandises. La Délégation Japonaise pense que cette mention devrait être obligatoire.

ARTICLE 4–

Il conviendrait également de toujours inscrire la mention g) relative à la délivrance des bagages.

Excerpts from R. Horner & D. Legrez,
Second Internationa l Conference on Private Aviation Law, Minutes (1975)

* * * * *

[page 269] **PROPOSALS OF AMENDMENTS SUBMITTED TO THE WARSAW CONFERENCE**

preceeded by the report
of the preparatory committee
instituted by the conference.

A.
PREPARATORY COMMITTEE

Proposals on the Order of Discussion

The committee, after having analyzed the various amendments presented by the different delegates, has deemed it opportune to retain in the first place the amendments touching questions relating to the very essence of the draft of the Convention and for which certain delegates would eventually have to ask instructions from their Government.

* * * * *

[page 270] **Analysis of the Amendments**

* * * * *

[page 272] **Article 3**

Paragraph 1:

Polish proposal. [Question of substance (2).]

Letter (c): German, British and Hungarian proposal. [Question of substance (2).]

Letter (d): Italian proposal. [Question of wording.] German and British proposal. [Question of substance (2).]

Letter (e) additional: German and Czechoslovakian proposals, (cost of carriage). [Question of substance (2).]

Letter (f) additional: Polish and Brazilian proposal (indication of the traveler). [Question of substance (2).]

Paragraph 4:

Japanese proposal with regard to the last paragraph of Article 4 – It shall be necessary to take up the same general wording formula.

Greek proposal (sanctions). [Question of substance (2).]

German proposal. [Question of wording.]

Article 4

Paragraph 4:

Letter (a): British proposal (elimination). [Question of substance (2).]

Letter (c): British, German and Hungarian proposal (elimination). [Question of substance (2).]

Letter (d): Italian proposal. [Question of wording.] German proposal (elimination). [Question of substance (2).]

Letter (f): British proposal (elimination). [Question of substance (2).]

Letter (h) additional: Swiss and German proposals (addition of the number of parcels, etc. . .). [Question of substance (2).]

Letter (i) additional: German proposal (interest in the delivery). [Question of substance (2).]

Letter (l) additional: German and Czechoslovakian proposal (cost of carriage). [Question of substance (2).]

Paragraph 5:

German proposal. [Question of wording.]

Last paragraph:

Japanese proposal (see Article 3, last paragraph).

Second Japanese proposal (compulsory particulars). [Ques[page 273]tion of substance (2).]

Swiss proposal (new compulsory particulars). [Question of substance (2).]

Greek proposal (see Article 3). [Question of substance (2).]

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[page 283]

B.
PROPOSALS OF THE DELEGATIONS

* * * * *

[page 303]

GREEK REPUBLIC

Article 3 – Section 4

Conforming to Article 22 of the draft, in the case of an accident, the carrier can escape his liability if he proves that he and his servants have taken reasonable measures to avoid the damage, or that it was impossible for them to take them.

However, according to Article 3, the carrier loses this advantage if the passenger ticket does not contain the particulars indicated in this article.

It is possible, in effect, that by simple negligence the carrier has omitted to mention in the passenger ticket the place of issuance, or the point of departure, or his name and address; or even that he keep his former address in the ticket, or finally he does not point out an intermediate stop.

These are, in general, omissions without great importance for the party, because it is known or easy to establish that the ticket was issued and the departure took place from the aerodrome of such and such a city, that the aircraft is owned by such company, or because the intermediate stop can be without interest for the contracting party.

One can wonder why such an omission, without importance for the majority of cases, should lead to such a serious sanction in every case as that provided for by Article 3, paragraph 4.

If the omission is without interest for the other party, and if it causes him no damage, how could one justify this severe sanction on the shoulders of the carriers?

This sanction is justified only in the case where the omission of a particular would have engendered damage to the passenger, as it can happen in certain circumstances.

But who will judge if there is damage to the other contractant because of this omission and if the damage is such that the carrier must be made to lose the option of escaping by proof that he had done what is necessary to avoid the accident? Naturally there is only the court, seized with the affair who would be able to judge this question.

It's for these reasons that we propose to modify paragraph 4 of Article 3 of the draft as follows:

[page 304] "If, for international carriage, the carrier accepts a traveler without having made out a passenger ticket, the contract of carriage shall nonetheless be subject to the rules of the present Convention, but the carrier shall not have the right to avail himself or the provisions of this Convention which exclude in all of in part his direct liability or that derived from the errors of his servants.

"If the passenger ticket does not contain one of the particulars hereabove, the carrier shall be deprived of this

right in the case where, according to the judgment of the court, damage would be caused to the other party by this fact."

For the same reasons one should modify in the same sense paragraph 7 of Article 4 for the baggage check and Article 17 for the waybill.

* * * * *

[page 310] **JAPAN**

* * * * *

Articles 3 and 4

It's not clear from the text, in particular from Article 4, if the particular of the clause concerning the liability of the carrier is compulsory, as it is provided for in Article 17 for goods. The Japanese Delegation thinks that this particular should be compulsory.

Article 4

It would be advisable as well to insert always particular (g) relating to delivery of baggage.

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